S. HRG. 101-473

AGENT ORANGE COMPENSATION, VA HOME LOAN GUARANTY, AND HEALTH-CARE FACILITY SECURITY LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 13 (Section 221), S. 404, S. 898, S. 1153, S. 1158, H.R. 1415, and Related Bills

JUNE 22, 1989

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AGENT ORANGE COMPENSATION, VA HOME LOAN GUARANTY, AND HEALTH-CARE FACILITY SECURITY LEGISLATION

THURSDAY, JUNE 22, 1989

U.S. Senate,
Committee on Veterans' Affairs,
Washington, DC.

The committee met, pursuant to notice, at 8 a.m., in room SR-418, Russell Senate Office Building, Hon. Alan Cranston (chairman of the committee) presiding.

Present: Senators Cranston, Murkowski, Simpson, Thurmond, and Jeffords.

OPENING STATEMENT OF CHAIRMAN CRANSTON

Chairman **Cranston**. The hearing will please come to order. Good morning, and welcome to this hearing on Agent Orange compensation legislation and legislation and oversight relating to the VA Home Loan Guaranty Program and security of health facilities. My detailed statement is available at the press table.

The first item on today's agenda is S. 1153, legislation I joined in introducing on June 8 with my good friends, Senators Daschle and Kerry, who have taken such a major leadership role on this issue.

We were joined by a bipartisan group of 19 Senators, including five members of this committee: Senators Matsunaga, DeConcini, Rockefeller, Specter, and Jeffords.

This bill is a good, solid measure that if enacted will be of assistance to many Vietnam veterans and their families. It has a general consensus of support from the veterans' service organizations.

S. 1153 is very similar to legislation passed by the Senate last October 18 during consideration of S. 2011. Senators Daschle and Kerry and I have worked together very closely and cooperatively since last Congress to reach an agreement on a bill for this Congress on this very complex issue. I am delighted that we have succeeded in doing so.

S. 1153 contains 10 substantive provisions. In my view the three major ones are as follows:

First, S. 1153 would provide for the interim temporary payment of VA benefits to Vietnam veterans suffering from non-Hodgkin's lymphoma, or soft tissue sarcoma. These benefits would be paid from October 1, 1989 until April 15, 1992.

The bill includes a mechanism whereby a vote to extend or make permanent the interim benefits would be ensured in each House if desired by any member prior to the expiration of these benefits.

Second, the bill would establish procedures for the National Academy of Sciences—or if NAS declines, another appropriate independent scientific body—to evaluate the results of the CDC Selective Cancers Study and all other appropriate scientific studies and information regarding the health effects of veterans' service and exposure in Vietnam to dioxin or other toxic agents contained in herbicides used there.

That evaluation will be submitted to the Secretary and the two Veterans' Affairs Committees within 1 year after enactment, or 60 days after the CDC study report is submitted, if that date is later. The Secretary will then have to determine whether or not there is positive association between exposure to toxic agents in Vietnam and NHL or STS or any other disease. If so, then the Secretary must establish presumptions of service connection for such diseases.

Third, S. 1153 would extend from September 30, 1990 to December 31, 1993, veterans' entitlement to and priority eligibility for VA health care based on exposure to Agent Orange in Vietnam.

We provided this access to health care in 1981 to ensure that while Congress was working to find a resolution to the overall Agent Orange issue, veterans could receive VA health care for conditions that might be related to the Vietnam service. This extension is intended to continue to give Vietnam veterans this peace of mind.

Too many Vietnam veterans and their families have suffered anguish far too long because of concern over the effects of exposure to Agent Orange and other herbicides. I recognize the frustrations many have experienced in working to resolve this difficult, intensely-felt, vitally important issue. Thus I look forward to bringing S. 1153 before the committee at our markup next month on July 13, and to the Senate floor shortly thereafter.

Before leaving the Agent Orange issue I want to highlight the very constructive role that Secretary Ed Derwinski has played in deciding not to appeal a district court decision invalidating certain restrictive aspects of VA regulations dealing with Agent Orange exposure.

This decision was a most refreshing change from prior VA responses to Agent Orange matters. I congratulate the Secretary and our VA witness, Deputy Secretary Tony Principi, for this very forthcoming action.

Later this morning, Senators Daschle and Kerry will be testifying on S. 1153. I apologize in advance if their arrival causes the interruption of any of our other witnesses' testimony.

Next on our agenda are bills that would modify the VA Home Loan Guaranty Program. The first is S. 1158, which I introduced on June 9 to create a solvent and equitable program that would better serve the interests of our Nation's veterans.

S. 1158, in many respects, parallels H.R. 1415, a bill which was passed by the House on June 6, and on which we are also receiving testimony today. However, some of the provisions are not identical, and there are four substantive provisions of S. 1158 that have no parallel in H.R. 1415.

Next is S. 404, which I introduced with the ranking minority member, Senator Murkowski, to extend for 2 years the loan fee and the no-bid formula which VA uses to decide whether to purchase a foreclosed property or pay its guaranty. Shortened to a 1-year extension, this legislation is essentially what I will be proposing as our committee report on July 13 in response to our reconciliation instructions.

Finally, we have before us S. 898, VA's home-loan legislative proposal, which I introduced at the request of the administration on May 2, 1989. The provisions of each of these bills are outlined in my written statement.

I would like to restate, however, that it has become increasingly evident that the current loan guaranty program is in need of revision and reform to ensure its continued solvency. In fiscal year 1989 alone, the loan guaranty revolving fund has received $658 million in appropriations, and $120 million more is pending in the supplemental appropriations bill.

Our goal this morning is to evaluate the options contained in the bills before us with the intention of making improvements in the VA home loan program that would enhance its value to veterans, maintain its solvency, and reduce its dependence on taxpayer funds, all without compromising basic program goals.

The third and final item on today's agenda is VA security oversight, and section 221 of S. 13 which addresses problems in VA security today. This provision would, first, assign to an Assistant Secretary of Veterans Affairs the responsibility for the functional and technical supervision in central offices of VA security and law enforcement functions in the field.

Second, it would require the Secretary, within 90 days after enactment, to submit a report containing a plan for upgrading VA police officer training, recruitment and salaries, and assessments of the need to allow VA police officers at medical centers in high crime areas to carry weapons for self-protection and of the feasibility of reducing police services in centers with no significant security problems in order to expand services in centers with greater problems.

These matters were originally scheduled to be considered at a June 14 hearing, but they were postponed when I found the written testimony for that hearing to be most cursory, and superficial with respect to the security issue.

Postponing the committee's deliberation of this issue until today allows us to address concerns about VA security directly with VA top management. I believe Tony Principi shares many of these concerns.

I want to say a special word of thanks to the VA officials who worked so long and hard to prepare answers to the 67 security questions we presented last week and to get those responses to us on Tuesday.

The committee will also hear this morning from three VA medical center security chiefs who will be testifying under oath in response to questions and providing their views on the problems confronting the VA security service and possible solutions to these problems.

There are obviously a great number of issues to be discussed today. The committee is very interested in the ideas and views of the witnesses appearing today and of those who have submitted written testimony. I thank those of you who have come a long way to be with us here today, especially my fellow Californians, Brian Hawkins from West Los Angeles, and Angelo Mozilo from Pasadena.

Let me first make an announcement on the VA medical care situation. I want to announce what is happening on the VA fiscal year 1989 medical-care supplemental following the House's rejection of the conference report yesterday afternoon.

Yesterday evening I met with the Senate minority and majority leaders and the chairman and the ranking minority member of the Appropriations Committee to try to find a way to break the impasse over the supplemental and to get funding for VA health care out to the field where it is urgently needed.

We then met with House Speaker Foley and the chairman of the House Appropriations Committee along with the majority leader to discuss possible alternatives. We will be meeting again later this morning.

I am committed to doing all I can to see that supplemental funding is provided for VA medical care before the Senate recesses this weekend for 2 weeks. Presumably, if I leave at some point this morning, it will be to go to the meeting on that subject.

Before proceeding, I would like to remind everyone that since we have many, many witnesses today, we ask that each witness limit his or her oral testimony to 5 minutes, so that we will have sufficient time for questions.

We will be using these lights up here for this purpose. When you see the yellow light, you have 1 minute remaining on your time. When you see the red light and hear the bell, your 5 minutes have expired, so please then conclude your remarks.

We have asked all witnesses—except for the three security chiefs—for prepared statements, which of course will be printed in full in the hearing record.

We will begin with Tony Principi, Deputy Secretary of Veterans Affairs. Tony, it is always a pleasure to see you back here. We look forward to your testimony. I again thank you for your quick response to the security questions. We also appreciate your generally positive testimony on the Agent Orange issue and your constructive approach to S. 1158 and the other home-loan legislation and issues.

It appears to me that the committee and the Department should be able to work together in a productive way on the issues that are before us today.

Please begin your oral statement now, and do try to keep it within those 5 minutes.

[The prepared statement of Chairman Cranston appears on p. 138.]

STATEMENT OF HON. ANTHONY J. PRINCIPI, DEPUTY SECRETARY OF VETERANS AFFAIRS, DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY R.J. VOGEL, CHIEF BENEFITS DIRECTOR, VETERANS BENEFITS ADMINISTRATION; AND MANSELL G. PIPER, DIRECTOR OF ADMINISTRATION, VETERANS HEALTH SERVICES AND RESEARCH ADMINISTRATION

Mr. **Principi.** Thank you, Mr. Chairman. It is certainly a pleasure to appear before you and the members of the committee to present the views of our Department on the three items you have enumerated, loan guaranty, Agent Orange and VA security services.

First, with regard to loan guaranty, VA is well aware that in recent years the costs to the taxpayers of operating the loan guaranty program have been staggering. We share your concern, Mr. Chairman, about the future solvency of this program which provides an important benefit to veterans, and certainly applaud your leadership and that of Senator Murkowski in trying to come to grips with the losses in the program and return solvency to this very, very important veterans' benefit.

We therefore support the general concept of S. 1158. We do have some concerns, some technical, some substantive, which have been enumerated in my prepared comments.

We support the overall concept of the new guaranty fund. While we generally support the revised fee structure for veterans contained in the bill, we believe that only those veterans whose disability was rated not less than 30 percent should be exempt from payment of the fee, similar to the approach taken by the House last year.

We regretfully must oppose requiring the Government to pay the funding fee that would have been paid by those exempt. We have concerns about creating a permanent budget authority, we believe that this issue should be viewed in the context of the overall administration credit reform proposal. We support the release of liability proposed in the bill, but we do have a technical concern with the language of section 2(c) of the bill which is again discussed in my prepared remarks.

S. 1158 would extend for 1 year the current provisions of the law relating to the sale of vendee loans. Although we would prefer that the committee adopt the vendee loan sale provisions in S. 898, we do not oppose that 1-year extension.

The bill also would require all loans sold, whether with or without recourse, to be credited as offsetting collections of the loan funds without reduction. We must oppose this provision as well. It is not in keeping with the scorekeeping conventions agreed upon by the Congressional Budget Office and the Office of Management and Budget and we believe it is in violation of the spirit and the letter of the bipartisan budget agreement as well.

In view of the large losses sustained by the VA in recent years in this program, and the overall Federal budget deficit, regretfully we cannot support any increase in the guaranty at this time through the purchase of additional entitlement.

We do favor requiring loan holders to notify VA if they refuse to accept a partial payment. This would give the VA the option of intervening or taking appropriate action, resources permitting. Mr. Chairman, my formal testimony is inconsistent with this position, and we will submit revised testimony for the record.

S. 1158 would have VA consider part of the costs to the Treasury of borrowing in computing net value. This section would effectively supersede our regulations we have proposed which would require VA to take into account the full interest cost of funds. While we continue to support the proposed regulation, and believe that it would help us to reduce losses in this program, we believe that your amendment represents a reasonable compromise.

In summary, Mr. Chairman, we share your concerns about the loan guaranty program. We appreciate your efforts to address the concerns through S. 1158, and we would be happy to work with members of the committee and the staff on resolving our concerns which I have briefly identified.

Regarding S. 898, we appreciate, Mr. Chairman, your introducing the Veterans' Housing Amendments Act of 1989 at our request. We believe that those provisions would help reduce administrative regulation and enhance revenues. We urge that all the provisions of S. 898 be adopted, other than section 4 relating to the loan origination fee. In lieu of that section, we support your revised fee structure proposed by S. 1158.

S. 404 would extend for 2 years two provisions scheduled to expire at the end of the present fiscal year. In the event that the funding fee provisions are not modified as proposed by S. 1158, we would favor an extension. VA favors making the no-bid provisions permanent as proposed by S. 898 rather than merely extending them.

On Agent Orange—Mr. Chairman, at the outset, thank you for your very kind comments about the Secretary's action with regard to the recent court decision. Last month, Secretary Derwinski did in fact take a bold step toward settling the controversy over Agent Orange.

Citing the interests of veterans we serve, the Secretary announced that VA would not seek an appeal of the court's ruling that some VA regulations relating to Agent Orange had missed the mark intended by Congress. We have been working with the Advisory Committee for more than 4 years trying to follow the congressional mandate that VA perform the fact finding and make the decisions about Agent Orange.

We have already performed what the court called a "Herculean" task of reviewing all pertinent scientific literature relating to Agent Orange. We could have appealed, but we did not. Secretary Derwinski announced that the VA was going to accept the decision.

We are committed to having final regulations implementing the judge's decision issued by October. We intend to have the Advisory Committee immediately review the evidence in light of the new standards. While VA shares the impatience that prompted S. 1153, we ask that its further consideration be held at abeyance until we have completed our work.

There are suggestive studies which have raised questions with respect to non-Hodgkins lymphoma and soft tissue sarcoma. The Advisory Committee will be looking at all of these studies. Should this committee conclude that the process will be lent credibility by our consulting with additional outside experts, we would be pleased to do so if it would not unduly delay our progress.

Nor do we object to an expansion of the Advisory Committee to permit additional viewpoints to be represented.

Finally, we would not object to an independent review of our conclusions by any entity which the Congress believes would lend credibility to the determination. We are acutely aware of the strong feelings on this issue. We want the matter resolved, and we are determined to do so.

On VA security issues, very briefly, Mr. Chairman, I just want to say that I believe your legislation has helped us to become more acutely aware of the problems in the operation of the VA police force, which unfortunately have diverted attention from the very real benefits that the VA police force has provided at many VA facilities.

We believe, however, that the answer to these problems is not to realign the responsibility for the security function. Rather, we believe the answer is to make a renewed commitment to the proper functioning of a properly educated and trained police force providing any resources necessary to attain that goal.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Principi appears on p. 151.]

Chairman CRANSTON. Thank you very much, Tony.

Frank, do you have any opening remarks?

OPENING STATEMENT OF SENATOR MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate your timing this to accommodate me. I don't know whether the witness accommodated my appearance, or the other way around, but I noticed that since he's accepted his new responsibility, he seems to be getting more to the point than previously. Maybe it's because he not only has to have his words put together, but honor them as well.

I have a statement for the record, Mr. Chairman, and ask that it appear in the hearing record. Obviously, we are talking about a wide range of issues this morning. Some of them are a bit unrelated, nevertheless familiar to both of us, VA security, veterans' housing and the Agent Orange issue.

I think we are both aware of the environment within which Congress responds to the possible health effects of herbicides has changed dramatically. I have been on the committee with you since my entry into the Congress, and the Agent Orange issue has been with us long before that.

I think it is fair to say that a year ago the VA was perhaps not as responsive as some might wish but under Secretary Derwinski and Mr. Principi's bold and forceful actions we have seen dramatic evidence that there is a decisive response to the crises that are occurring in both the veterans' housing situation as well as the questions relating to Agent Orange.

Rather than be redundant, I know, Mr. Chairman, that you will review this statement in great detail when you have the leisure of time, I would ask that the balance of my statement be inserted into the record. I understand that there will be a congressional leadership meeting today regarding the dire emergency of supplemental appropriation.

I intend to participate to ensure the interests of the veterans are well represented at that meeting, and Jack is reminding me that this is the 45th anniversary of the GI bill. I would ask that any statement regarding that anniversary be entered into our committee record this morning.

Thank you, Mr. Chairman and thank you, Mr. Principi.

[The prepared statements of Senator Murkowski appear on p. 145.]

Chairman CRANSTON. Thank you very much, Frank.

Strom, do you have any opening remarks?

OPENING STATEMENT OF SENATOR THURMOND

Senator THURMOND. Thank you, Mr. Chairman. I will take just a couple of minutes.

Mr. Chairman, it is a pleasure to be here this morning to receive testimony on the home loan program, Agent Orange compensation and the security of VA medical centers. I appreciate your scheduling this hearing.

The home loan program, which has experienced various difficulties over the past few years, would change significantly under the legislation we are considering this morning.

The program would change from one where the Department of Veterans Affairs guarantees a home loan to one where the Department, in effect, provides mortgage insurance to the veteran. Mr. Chairman, before we alter the program so significantly, I think we should make a special effort to ensure that such a change represents a wise policy, and as such that the program would be placed on sound footing.

Mr. Chairman, I would like to ask a rhetorical question. Could it be that the real problem with the home loan program is that we have extended credit where the recipient has not been truly creditworthy by market standards? Perhaps a solution is a little more accountability.

With respect to Agent Orange, I would like to commend the Department of Veterans Affairs for their decision to rewrite regulations governing claims for disability compensation where a veteran was exposed to Agent Orange. One of the bills before us today, S. 1153, would provide interim compensation through April 15, 1993, to Agent Orange-exposed veterans.

I believe the provision from last year, which would have provided interim compensation until shortly after the Centers for Disease Control Agent Orange study is released in the Spring of 1990, represents a more sound approach. Having a deadline for interim benefits close in time to the release of the study, that is 1990, provides more accountability. I believe this latter approach with the 1990 deadline is more prudent.

Finally, Mr. Chairman, I intend to carefully review the testimony on the remaining issue of security at VA medical centers.

At this time, I must leave to attend another meeting. I want to thank you for your courtesy.

Chairman CRANSTON. Thank you very much, Strom.

Tony, we have a lot of ground to cover this morning, so if you can be very brief, like "yes," "no," or "maybe" in your responses to questions, that would be great.

We appreciate your generally positive testimony on the Agent Orange issue and your constructive approach on S. 1158 and the home loan legislation initiatives. I want to start on the home loan business.

What is VA's current collection rate in terms of dollars owed to dollars collected, for collecting veterans' liabilities to VA for guaranty payments VA has made on defaulted loans?

Mr. PRINCIPI. It is under 10 percent, but we will submit it for the record.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

Fiscal year 1988 had a collection rate of 2.2 percent.

Chairman CRANSTON. Do you know what portion of the collections come from offsets against veterans' and survivors' VA compensation, DIC and pension benefits?

Mr. PRINCIPI. I will have to provide that for the record, Mr. Chairman.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

During fiscal year 1988, approximately 56 percent of collections came from offsets and 44 percent came from cash.

Chairman CRANSTON. If that is a pretty substantial portion coming from the offsets, doesn't this mean that these collection efforts hit hardest against service-connected veterans or surviving spouses and VA pensioners?

Mr. PRINCIPI. It would appear to be so.

Chairman CRANSTON. Do you think that is a troubling circumstance?

Mr. PRINCIPI. It is something that we should look at, Mr. Chairman, and report to the committee. But yes, it would appear to be a troubling issue.

Chairman CRANSTON. It is troubling, if that is where the emphasis lies.

Both S. 1158 and H.R. 1415 would reduce the loan fee from 1.25 percent to 0.75 percent for veterans making a downpayment of at least 5 percent. S. 1158 would make another reduction, to 0.25 percent, for a 10 percent downpayment. Do you believe that this additional reduction would increase the size of downpayments on VA guaranteed homes?

Mr. PRINCIPI. I don't know if we have any evidence that it would, but I certainly believe that it is a very, very positive step the committee is taking, and I would hope that it would in fact increase the number of downpayments.

Chairman CRANSTON. What effect do you think that might have on the default rate?

Mr. PRINCIPI. I think it would reduce the default rate. I think it is a very positive step.

Chairman CRANSTON. The committee staff has had several conversations with VA staff regarding the revision of the no-bid formula in S. 1158. That provision expressly will allow VA to take the cost of funds into account but only on the portion of the amount by which the funds necessary to acquire the property exceed the funds needed to pay the guaranty.

VA's proposed regulations ignore the latter cost—interest on the amount needed to pay the guaranty—resulting in a formula that is skewed toward no-bids. Do you now agree that in order to make a valid comparison, any cost of funds factor should take into account the cost of funds for paying the guaranty?

Mr. PRINCIPI. We support the proposed regulations that we be allowed to compute the entire interest cost. However, we believe that the position the committee has taken in S. 1158 is a reasonable compromise and we certainly support that.

Chairman CRANSTON. Then you don't have any plans to withdraw the proposed regulations or modify them to reflect this correction?

Mr. PRINCIPI. At this time we do not, Mr. Chairman.

Chairman CRANSTON. In the analysis performed of H.R. 5221, the predecessor to H.R. 1415, Peat Marwick stated its opinion that the new indemnity fund under H.R. 1415 would begin to show a deficit in 1993 that would continue indefinitely. What is the VA's own current estimate of whether and when the new revolving fund in H.R. 1415 and the one in S. 1158 would run out of funds?

Mr. PRINCIPI. Our best estimate is somewhere between 3 and 4 years and the 9 years estimated by CBO. Somewhere around 5 or 6 years we will start running a deficit and that deficit would continue.

Chairman CRANSTON. On page 6 of your written testimony, you state that the proceeds of the sale of vendee loan assets with recourse are "a means of financing outlays by borrowing."

How does this differ from a nonrecourse sale, in which VA overcollateralizes a sale and takes back so-called "subordinate certificates" for which VA receives no money at the time of the loan asset sale and for which the return is uncertain?

Why are you grinning?

Mr. PRINCIPI. I believe there is little difference between the two, Mr. Chairman. In my own opinion, there is little difference between the two.

Chairman CRANSTON. Isn't it true that the VA has overcollateralized its nonrecourse loan asset sales to the point at which the likely cost to VA for losses due to defaults is virtually identical to what those costs would likely have been based on historical experience if the sales were sold with recourse?

Mr. PRINCIPI. Yes, that is correct.

Chairman CRANSTON. Many in Congress and most witnesses at the hearing have repeatedly criticized loan asset sales in general, as an effort by the administration to achieve short-term deficit reductions at the expense of the long-term solvency of the VA Home Loan Guaranty Program. What are your thoughts on that subject?

Mr. PRINCIPI. I believe that loan asset sales represent an agreement reached between the administration and the Congress as part of a bipartisan budget agreement, therefore I think that both ends of Pennsylvania Avenue should have agreed to this approach.

Really, we are concerned about the assets sales and we continue to look at them to ensure that we are taking into consideration the long-term solvency of the fund and what is in the best interests of the Government.

Mr. STEINBERG. Tony, let me follow up for one moment. I believe what you are referring to is the agreement on not scoring for deficit reduction purposes revenues received from asset sales.

We were wondering if you have any thoughts, however, on the policy of selling off the loan guaranty fund's assets in a rapid way in order to increase the amount in the loan guaranty fund thereby reducing the amount of appropriations that may be necessary even though it might be better from a long-term economic standpoint to retain those assets and to retain the revenues that those assets produce.

Mr. PRINCIPI. Certainly we try to keep the level of appropriations down. We continually review our loan asset sales to make sure that they are not only in the best interests of the VA but of the Nation and the economy. Sometimes we have disagreements with the Office of Management and Budget on that issue. However, we try to structure our loan asset sales to achieve the best possible return.

Chairman CRANSTON. On page 13 of the Mortgage Bankers Association's testimony, MBA predicts that the new VA rule requiring appraisals to be performed by a rotating list of approved appraisers will result in delays and expenses that will adversely affect veteran borrowers. Would you comment on that, please?

Mr. PRINCIPI. It will not. It will not delay the loans.

Chairman CRANSTON. Could you give us a more detailed response as to why you think that is the case?

Mr. PRINCIPI. We will provide that for the record.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

The requirement that fee appraisers be selected on the rotational basis to perform appraisals is not a "new rule" for the VA. Since the early years of the VA Loan Guaranty program the VA has utilized the rotational procedure for selecting appraisers from our lists of qualified appraisers. This procedure was initiated after an earlier procedure where the lender selected the appraiser from a list supplied by VA resulted in abuses. The Congress codified our long standing practice with the enactment of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, Public Law No. 99-576 section 407. That section of the Act added section 1831 to title 38, United States Code, which requires the Secretary to "select appraisers from a list . . . on a rotating basis to make appraisals for the purposes of . . ." the Loan Guaranty program.

We, therefore, believe we cannot, under the current law, accept appraisals made by lenders' staff appraisers.

In reviewing a number of past instances of fraud in Government home loan programs, we have found that the compromise of the appraisal assignment procedure was a key element in the fraud scheme. We, therefore, do not believe it is prudent for VA to agree to any procedure where a party with a vested interest, such as the buyer, seller, broker, or lender, is able to select the appraiser. This is especially true in a situation, like the HUD Direct Endorsement program, where the appraiser is a salaried employee of the lender.

We, further, do not believe that onerous delays and expenses that adversely affect veterans will result from lenders not being able to utilize their salaried staff appraisers to perform the appraisals on which the values of properties they intend to make loans will be based.

Earlier this year, one of our regional offices brought a matter to our attention involving the conversion of a HUD Conditional Commitment to a VA Certificate of Reasonable Value (CRV). One of the issues in that office's inquiry concerned the fact that the HUD Conditional Commitment was based upon an appraisal made by a HUD direct endorsement lender's staff appraiser, and not by an appraiser who had been assigned by HUD on a rotational basis. Our review of this matter, including discussions with HUD, revealed the conflict between accepting such cases and section 1831(b)(1) of title 38, United States Code.

Subsequently, VA notified all field stations that VA would no longer accept a HUD Conditional Commitment for conversion to a VA CRV when that Conditional Commitment was based on an appraisal made by a direct endorsement lender's staff appraiser. To accommodate home loans being processed at the time of our notice to the field stations, we allowed HUD Conditional Commitments or Master Conditional Commitments which were based on an appraisal completed by a lender's staff appraiser on or before May 12, 1989, to be considered eligible for conversion to a VA CRV. All HUD Conditional Commitments based on an appraisal made by an appraiser assigned by HUD on a rotational basis continue to be eligible for conversion to VA CRV's. Our field stations issued releases to program participants notifying them of this issue. Since lenders are on notice relative to our requirements we do not believe that onerous delays and expenses that adversely affect veterans will be experienced.

The VA feels strongly about the rotational selection process, and is not desirous of any change in this important quality control procedure.

Chairman CRANSTON. You have stated that you oppose the provision in S. 1158 allowing purchase of additional entitlement of up to $10,000 in connection with a particular loan additional fee of one-tenth of 1 percent for each $1,000. Isn't this fee per $1,000 well within the range estimated in the Peat Marwick study as an overall fee—2 to 4.5 percent—that would produce a self-sustaining program?

Mr. PRINCIPI. I don't believe so, Mr. Chairman. Although I understand the genesis and the reasons behind wanting to raise the guaranty—as you know, we have raised it from $27,500 to $36,000 just about 1 or 2 years ago—I am concerned about the contingent liability that we face in the out years if we raise the guaranty another $10,000 to $46,000.

That would raise the maximum loan amount to $184,000 and given the fact that the VA buys back almost 80 percent of the homes the additional cost to the Government in the event of an economic downturn, as we have witnessed in the Energy Belt States, would be absolutely staggering.

I appreciate the concern, being from California, with the cost of housing in places like California and the West. However, the long-term potential liability is so great that we have to oppose it.

Mr. STEINBERG. Tony, let me follow up for one moment on that. If you were choosing between a provision which merely increased the guaranty amount beyond the current $35,000 versus a provision which allowed purchase of additional entitlement, which of the two would you prefer?

Mr. PRINCIPI. Clearly the latter.

Chairman CRANSTON. Has the VA developed data indicating whether this $10,000 entitlement provision would result in added net costs to VA?

Mr. PRINCIPI. We have not.

Chairman CRANSTON. Would you provide for the record a cost estimate for that provision?

Mr. PRINCIPI. We would be happy to, Mr. Chairman.

Chairman CRANSTON. When could you get us a cost estimate for the entire bill?

Mr. PRINCIPI. In approximately 1 week, Mr. Chairman.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

As previously provided in our comparison of $10,000 entitlement increase vs. purchase of additional entitlement, our analysis indicates that, under stable economic conditions, an additional $10,000 entitlement provided to all veterans, or purchased as an option, would not increase cost to the Government. However, under a straight increase of entitlement the Government becomes more vulnerable to loss in the event of severe economic downturn because loan amounts between $90,000 and $144,000 would carry higher Government guaranty. Under a general entitlement increase of $10,000 to all veterans VA's guaranty liability would rise on all loan amounts above $90,000, e.g., on a $100,000 loan to a first time home buyer the guaranty is $36,000 or 36 percent. With a $46,000 maximum entitlement VA's guaranty would be $40,000, or 40 percent. VA's contingent liability would increase and in certain cases VA would pay the lender the full guaranty amount (no bid) in excess of the current $36,000 maximum.

In the event of serious economic difficulty characterized by heavy foreclosures and a sharp decline in property values additional liability by VA on those higher loan amounts could result in significant losses to the Government. However, in a more stable "normal" environment we would expect a very low foreclosure rate on the group of loans above $90,000. Most likely the foreclosure rate would be less than 3 percent in any origination year. At this foreclosure level the current 1 percent funding fee would produce sufficient income to offset losses from foreclosures on these loans.

[The comparison of $10,000 entitlement increase for all veterans vs. purchase of additional entitlement appears on p. 174.]

Chairman CRANSTON. The only basis cited in your testimony for opposing the provision allowing veterans to purchase up to $10,000 additional entitlement is that GNMA would have to raise its loan limit in order to make higher value VA guaranteed loans marketable on the secondary market. GNMA traditionally has made such adjustment as a matter of course, as the VA guaranty limit has increased. Do you have any basis for believing it will break from that tradition in this case?

Mr. PRINCIPI. I do not, Mr. Chairman. I do know their testimony was opposed to the increase in the guaranty.

Chairman CRANSTON. Frank, I have about three more questions on this topic, so if I may I will continue.

On January 30, 1989, the then-Acting Administrator of Veterans' Affairs, Thomas E. Harvey, notified me by letter that VA intended to implement regulations modifying the no-bid formula to include a cost of funds factor. It stated that the new regulation would not take effect until October 1, 1989, in compliance with the wishes of the House and Senate conferees on the Deficit Reduction Act of 1984.

On May 16, 1989, Secretary Derwinski abrogated his predecessor's assurances and notified the Committee on Veterans' Affairs that VA would implement the cost of funds regulation on August 1 of this year.

Can you explain this about-face, and your failure to give formal advance notice to this committee of your intention to abrogate your predecessor's assurances to the committee with regard to the regulation's effective date?

Mr. PRINCIPI. I regret if we did not provide formal notification to the committees, Mr. Chairman. I would view that as an oversight on our part. I thought that we had advised the committees accordingly.

However, I feel very strongly that we have a responsibility to take whatever prudent and reasonable actions are necessary to ensure solvency for this program, to reduce our costs, especially to the veterans and to the taxpayers. One way to do this is to compute the cost of borrowing which is a legitimate cost, just as the mortgage bankers, when they borrow money, they have to pay certain costs.

It is a legitimate cost and should be calculated into the no-bid formula. The sooner we do it, the more money we will save. I think that would be beneficial.

Chairman CRANSTON. Would you give us your views on the effect that this policy reversal will have on—well, we will accept that it was an oversight, I will pursue that later. I understand your desire is to hold costs down to the best of your ability, but do try to let us know when there is going to be a reversal like that.

Mr. PRINCIPI. I shall, Mr. Chairman.

Senator MURKOWSKI. Thank you very much, Mr. Principi. In light of your interest and expertise in this area, which has been evidenced by your rather detailed answers this morning, I wonder if you, or those down at the VA, are concerned about the possible leak in the dike that might suggest that some of the activities at HUD might have also appeared in the VA Home Loan Program?

As you know, the dike is leaking all over HUD. The American taxpayer, as a consequence of programs that, while well intended, obviously did not have the management capability or the necessary oversight from the agency to ensure that gross discrepancies did not occur have suffered an enormous loss. Do you feel fairly comfortable with VA's situation or might you feel some constipation over the risks of the VA having some dust under the rug some place?

Mr. PRINCIPI. Certainly when the articles started appearing in the paper, I experienced some of the latter, and a few sleepless nights worrying about whether we were next. [Laughter.]

I immediately contacted our top managers in Veterans Benefits Administration, Mr. Vogel and Mr. Pedigo, and discussed this issue with them. They assured me that our processes were quite different than HUD, that we track our loans when they are made and closed, to ensure that those dollars are in fact being deposited into the revolving fund. They have assured me that everything is copacetic at the VA.

Be sure we are going to continue to look at it very, very carefully to ensure that there is no problem, and shore up any weaknesses we might find in our processing of guaranteed loans. But I feel reasonably comfortable that we are on solid footing.

Senator MURKOWSKI. So you are just keeping the milk of magnesia on the shelf?

Mr. PRINCIPI. Yes, that's right.

Senator MURKOWSKI. You know, when you were on the other side of this desk, we used to talk a good deal about the self-funding guaranty program which has cost the Government somewhere in excess of $2.5 billion over the last 5 years plus. That's a program that is supposed to be funded adequately out of the 1 percent fee.

Clearly that is not now the case. I think we have had a supplemental every year—we have had an appropriation or whatever else there is to make up for the shortfall, so clearly we have an unrealistic program, because we tell the taxpayer that this is a self-funding, with a 1 percent guaranty fee that is supposed to cover whatever the shortfall is.

It is great to play charades with those on the Appropriations Committee, but we are really not kidding anybody, the track record has already been established. I guess what we are doing is instead of passing on the true costs of what that guaranty program costs us, we are putting the costs out in two or three different doses of medicine.

What is your suggestion or solution now that you are in a position to direct and make policy? The minute we raise questions or suggest alternatives we get a scream from the veterans' organizations that we are being unfair to the veteran, or words to that effect.

Mr. PRINCIPI. I quite agree with you, Senator, and I really believe that the Congress—the House Committee, the Senate Committee, and in particular this committee—has done more in recent years to shore up the solvency of this fund and to put it on a sound financial footing than anything that has happened in years past.

Senator MURKOWSKI. We are just throwing money at it.

Mr. PRINCIPI. Well, no you are not, because you've done much more than that. You have looked at credit underwriting, you have looked at appraisals, you have looked at property management, you have energized us to do better and to reform our procedures, to balance the risks. I believe those steps that you have taken and that you are about to take arbor well for this program.

I believe that we need to do more. We need to enforce our own regulations, to move properties quicker and take whatever innovative steps are necessary to follow through on your mandate. I believe we are beginning to do so.

When we have severe downturns in the economy, as we have experienced in your home State of Alaska, and in Texas and Oklahoma, we are going to suffer losses.

However, with the incentive to make a downpayment and with the other reforms that you have brought about and with our following through, I believe we are well on our way to shoring up the weaknesses and to attaining the solvency of this program.

Senator MURKOWSKI. That sounds good, but what do you anticipate in your next year's budget requirement? What are you going to need in the form of a supplement to the appropriated funds for the guaranty program? The guaranty program is supposed to fund itself.

Mr. PRINCIPI. We probably will not need a supplemental next year.

Senator MURKOWSKI. OK, will you need an appropriation?

Mr. PRINCIPI. We will need about $453 million.

Senator MURKOWSKI. Why will you need a $453 million appropriation if you have a self-funding program?

Mr. PRINCIPI. Unfortunately, sir, it is supposed to be a guaranty program——

Senator MURKOWSKI. Now I see people back there saying "no, it's not a self-funding program" so why don't we go back on that?

Mr. PRINCIPI. In my view it is a guaranty program, it is not a subsidized housing program, so it should be self-sufficient.

Senator **Murkowski**. OK, we both agree it should be self-sufficient, but it is costing us $650 million as a guess this year, and if you are right it will be the first time in recent memory that we haven't had a supplemental.

Mr. **Principi**. The reasons are that the defaults are still very high. Although the defaults are down 5 percent, the claims paid are down 9 percent and the outlays from the revolving fund are going down, so everything is on the right glide path, so to speak.

Senator **Murkowski**. What did it cost us in appropriations last year?

Mr. **Principi**. I believe it was almost a billion dollars.

Senator **Murkowski**. A billion dollars and that doesn't include the supplemental. And this year it is $600 million and no supplemental?

Mr. **Principi**. Thereabouts, yes, sir. I will correct those for the record to be more precise, but I believe those figures are generally correct.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

Fiscal year 1988 appropriations to the Loan Guaranty Revolving Fund were $389.8 million, with a supplemental appropriation of $526.6 million for a total appropriation of $916.4 million. In addition, the guaranty fund received a readjustment transfer of $200 million, for a total of $1.1164 billion. Appropriations for fiscal year 1989 were $658 million, with a supplemental appropriation of $120 million, for a total of $778 million.

Senator **Murkowski**. I assume that your explanation for the decline is that VA has gotten rid of a lot of their inventory or the economy is picking up in some of these areas, or that there is a reason for that, because there is an improvement of $400 million on the appropriation level alone.

Mr. **Principi**. It is clearly a combination. The economy is turning around in those Energy Belt States. Some of those Energy Belt States are buying back fewer properties which is costing us less money. We are paying off the guaranty in more cases, and I believe we have to continue to do more of that.

Senator **Murkowski**. Would you support a floating guaranty based on actual experience so that you folks in the VA would be under the gun of performance, and so that we would truly have a self-funding program where we changed what we needed—in other words, the mortgage market out there reflects the price of money?

The price goes up and down with the demand. Interest rates change. What about a floating guaranty fee to accommodate whatever your shortfall is? So that you won't need an appropriation in a supplemental? That is truly a self-funding program.

In other words, if you need to pick up $600 million and you anticipate writing 50,000 VA loans you add a quarter of 1 percent instead of 1 percent to pick up that difference. If next you are all right, if you have a surplus, or whatever, I don't know——

Mr. **Principi**. This legislation, S. 1158, I believe takes us a step in that direction. It allows the fee to go up based on the shortfall in the fund. So for the first time we will have some discretion to raise that fee by 20 percent. I think that is just a tremendous step in the right direction.

Senator **Murkowski**. What I would like to see you do is, I would like to have your actuaries, either on VA staff or that you might contract with, evaluate your program as it is currently operated and come back and indicate for us what it would cost us to have a truly self-funding guaranty program based on actuarial experience in the past and anticipated based on the volume of loans you guaranty.

Then we would have some idea whether there is any justification to consider the merits of a self-funding program or if we are just whistling Dixie, which I think is what we've been doing in the past to the tune of $2.5 billion over 5 years.

My last question, Mr. Principi, is the issue of VA lenders, the issue of foreclosures. Currently, for the most part the VA lender is paid off in entirety, paid off totally by the VA. VA comes into the subdivision, takes over the house. Then the delays start because of waiting periods and procedures. Then you've got a winter thrown in and you have a few frozen pipes. It downgrades the house next door, we've seen them, both of us, and away you go.

What's this magic in 75/25 ratio of property acquisitions to claim payments? Why do you pay lenders all off in their entirety 75 percent of the time, and 25 percent of the time you let the lender handle it? Why isn't it better to let the local lender handle a foreclosure? He is on top of it, worked with the realtor to get the place sold, occupied or otherwise. I could never understand that.

Mr. **Principi**. I can't either.

Senator **Murkowski**. OK, well that's a good place to start.

Mr. **Principi**. Well, first, with regard to your previous question, sir, with regard to providing you with some statistical information about putting the program on a self-sustaining basis, we have had Peat Marwick do a study for us and the results are in and we can provide that to the staff for your review.

The no-bid formula, which is a very, very contentious and controversial issue, is provided in the law. We try to adhere to that no-bid formula in which we calculate whether it is in the best interests of the Government to pay off the guarantee or buy back the property.

Senator **Murkowski**. If you and I—I'm sitting on one side, Senator Cranston on another, and you are sitting on the side of making VA policy—and neither one of us can understand what's going on, or why, and yet it is going on. Why can't you say "hey, don't do that anymore because it isn't in the best interests of the VA"? The local lender is obviously going to be given an incentive and is going to be more efficient and effective.

Mr. **Principi**. Sometimes it is in the best interests of the Government to buy back the property rather than to pay the guaranty. Then we sell it. We are buying back 8 out of every 10 properties. Then we pay off all the costs associated with that property.

That's a real drain on our revolving fund, no question about it. We use the no-bid formula which is in the law, and we calculate, again, whether it is in our best interests to do so or not. That's one of the reasons that we have asked that our proposed regulations would allow us to calculate the cost of borrowing money in that no-bid formula.

I believe there is very little risk in the program. All the risk is on the veteran and the VA, and very little on anyone else. As a result, we are seeing the veterans having to pay increased costs for this program, because we are losing so much money. Our responsibility is to the veterans, and to be accountable to the taxpayers. I don't believe we have been exercising good business judgment.

Senator MURKOWSKI. I agree with all those things, but if you were over here listening to the witness, you, I think, would come to the same conclusions I have. It is a frustrating process out there because the bureaucracy is there, it's working, and in order to change it, you have to have some idea in reality about why 75 percent of the time the VA buys them back, and 25 percent of the time you don't.

You have not given me the answer, I don't know the answer. You didn't give me the answer 2 years ago, now I'm looking for the answer because we expect you to have the answer. I think it's appropriate because you are in a position to hold people accountable for the answer.

I think, and have always maintained, that you are better off to give the local lender in the community an incentive on those foreclosed homes and give the real estate people an incentive to move them, rather than have them hanging around your neck. You now have to go in and clean them up, and mess around with them. It might provide a lot of jobs within the VA for the people who handle this, but I think you ought to get out of it.

I think you ought to let the local lender do the foreclosure and move the property. I think you can structure it in such a way as to give him incentives. You will have a lot less headaches.

Mr. PRINCIPI. Yes, sir.

Chairman CRANSTON. Thank you, Frank. I am glad you are so uninterested in this problem. [Laughter.]

Senator MURKOWSKI. It's my old banker coming out.

Chairman CRANSTON. Tony, I want to move onto a couple of issues relating to Agent Orange. First, I again note the generally constructive tone of your prepared statement on the issue and I thank you for that.

Frankly, I don't think your request for time to let the current VA top management, Secretary Derwinski, you and the rest of your team tackle the Agent Orange issue and comply with the court decision, is unfounded. However, as you know as well as anyone, this issue has been around for a long time, and the reservoir of trust and goodwill that you need to draw on to gain the time you seek may be nearly dry.

I certainly pledge my willingness to continue to work closely with you and the Secretary on this issue, and will be watching closely the results of VA's efforts in response to the California court decision.

In that regard, will you please expand on the outline in your prepared statement as to what VA and the Environmental Hazards Advisory Group will be doing, and on what timetable, in order to respond to the court's decision?

Specifically, can you now please tie dates to activity? How often and when will the Advisory Group meet? What specific activity will they undertake at each meeting, and what is the expected output from the Advisory Group?

Mr. **Principi**. At the present time, we are in the process of drafting the proposed regulations with regard to complying with the court's decision on defining what is meant by significant statistical association.

In that regard, our people have been meeting on an unofficial basis, with representatives of the National Academy of Sciences, a former official with the Office of Technology Assessment, and biostatisticians from Georgetown University, and other organizations to get some sense from them on the approach we are considering in the proposed regulations.

We have representatives of the Veterans' Advisory Committee on Environmental Hazards coming into town next week to meet with us to discuss the proposed regulations and any recommendations that they might have with regard to them, and to start establishing certain criteria by which they will measure whether there is a significant statistical association between dioxin exposure and certain diseases.

We hope to have the final regulations published by October 1. So we are moving in a very, very timely fashion, yet we want to be very careful that we are doing so in a very honest, open and accurate way.

With regard to other dates and details, I would like to provide that for the record.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

The propose regulation was published in the Federal Register on July 18, 1989. Comments on the proposed regulation must be submitted by August 17, 1989. The comments on the proposed regulation and the Department's response to them will be submitted to the Veterans' Advisory Committee on Environmental Hazards which will convene on September 8, 1989, to offer its final recommendations. It is anticipated that the final regulation will be published in early October. The Advisory Committee will meet again on November 2, and 3, 1989, to consider the scientific literature in light of the new standard of a significant statistical association. The Secretary will then consider the recommendations of the Committee in determining whether any change in the Department's policy is appropriate.

Chairman **Cranston**. How long do you think it will take for the Secretary to make a decision after October 1?

Mr. **Principi**. Certainly within a month or two, but no later than the first of the year.

Chairman **Cranston**. Will the Advisory Group draft the regulations and be involved in that process?

Mr. **Principi**. We are drafting the regulations and we certainly are going to consult with them.

Chairman **Cranston**. The other matter I would like to develop with you relates to possible interaction between VA and the National Academy of Sciences.

As you know, S. 1153 calls for NAS to function as the contract scientific organization, to review and evaluate the scientific literature, a role that NAS President, Dr. Frank Cress, indicates in a June 21 letter received in connection with today's hearing, that NAS would be willing to assume if arrangements can be worked out.

Your written statement also raises the possibility of asking NAS to review VA's activity in connection with the lawsuit. Recognizing that it can take time to hammer out an arrangement with NAS, I think it would be appropriate to begin to explore with NAS the terms of any contract. Do you agree, and if so, will you ask the appropriate VA officials to begin such an effort?

Mr. PRINCIPI. We are in the process of discussing certain issues with NAS. We are concerned about the delay in contracting with them starting over, but we would be happy to explore contractual arrangements with NAS, so that in the event we proceed along that path, we will be ready to do so in an expeditious manner.

Chairman CRANSTON. That's very helpful. Please keep us advised on how that goes.

Mr. PRINCIPI. We shall.

Chairman CRANSTON. I note that Senators Daschle, Kerry, and I have today written to Senator Mikulski, Chair of the VA, HUD, and Independent Agencies Appropriations Subcommittee, to ask her assistance in getting research funds in VA's fiscal year 1990 appropriation to fund the NAS review called for in S. 1153. I am going to pursue that vigorously.

Turning to the matter of VA security, what is VA policy regarding which medical centers should have metal detectors, and what relationship does that policy have with respect to whether a particular medical center is located in a high crime area as defined by FBI crime index data?

Mr. PRINCIPI. Excuse me, I would like to ask Mr. Piper to answer that question if I may.

Chairman CRANSTON. Mr. Piper, would you introduce yourself for the record, please?

Mr. PIPER. My name is Mansell G. Piper. I am Director of Administration in the Veterans Health Services and Research Administration.

The high crime area that you refer to, Mr. Chairman, is a figure that we use from the FBI book on crime statistics. The median is 9.5. We use 8.5 because it is a little tougher area, and if we use the median, we would eliminate such places as New York, Los Angeles, and Chicago.

As far as the first part of your question on metal detectors, in those places, where directors locally feel that they have a significant problem, they request metal detectors be placed there. We do ask that wherever metal detectors are used, that they are manned by two policemen at all times.

Chairman CRANSTON. Why is it left to local discretion to decide where to use metal detectors?

Mr. PRINCIPI. They are the ones who are on the scene and who can identify the need for those metal detectors, and we try to take it on a case by case basis.

Chairman CRANSTON. If it is a high crime area, shouldn't there have to be some exception made to a general practice about using them?

Mr. PRINCIPI. For example, we have Portland identified as a high crime area, based upon our methodology. I don't believe that we need to have a metal detector.

Given the cost and the manpower to monitor a metal detector, we don't believe it would be necessary in a place like Portland, or Walla-Walla. But clearly, in a place such as New York City, or Chicago where there would be more of a threat to the safety and well-being of our patients and employees, we may consider on a case by case basis that we should have metal detectors in that area.

But the costs are very high—not so much the cost of the metal detector itself, but the cost to maintain and to have staff monitor those metal detectors can cost us upward of $500,000 per year.

Chairman CRANSTON. As I understand it, there are 78 centers in high crime areas. Only 20 have metal detectors. Perhaps that is not a very wise situation. Would it not be better to have a rule that you have them unless there is a reason to have an exception, which there may be in cases like Portland and some other facilities?

Mr. PRINCIPI. I think not, Mr. Chairman. I think we have to continue to do it on a case by case basis. Not only because of the costs, because our primary concern is the welfare of our people, especially our patients, but also access to a hospital.

You have emergency room accesses, you have different ways to get in and out of a hospital. We would have to close those accesses to patients and staff. The cost of putting a metal detector on every entrance to one of our VA medical facilities would be very high.

We have to weigh the risk and balance that risk against the cost and the inconvenience to our patients, visitors, and staff. So we try to be very careful in the way we handle this.

Chairman CRANSTON. I understand the general policy is to have two officers required to operate and monitor the metal detector. What is the actual practice, however? Do you stick to the two, or is that not observed all the time?

Mr. PRINCIPI. The policy is two, and I would hope that our medical centers are complying with that policy. We could check to make sure that is in fact being done.

Chairman CRANSTON. Let us know—check and see if that is the case.

Mr. PRINCIPI. Yes, Mr. Chairman.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

Seven medical centers report that they are currently operating stationary metal detectors. One reports having two police officers on duty at all times; three have two police officers on duty at peak ingress, and three have one police officer on duty at all times.

Chairman CRANSTON. What special equipment, beyond that given to all VA security police officers, is given to officers who operate metal detectors at VA medical centers?

Mr. PRINCIPI. They have mace—mace and batons—but I believe that in some hospitals where we don't have metal detectors, we also have officers with mace and batons as well, so I would say that no special equipment is provided to those who monitor metal detectors.

Chairman CRANSTON. Our information is that only 9 of the centers have batons at the present time.

Mr. PRINCIPI. That's correct.

Chairman CRANSTON. What's VA policy on providing protective vests to police officers operating metal detectors, as well as your policy in requiring that they be worn?

Mr. PRINCIPI. Again, that is based upon a local request. We will provide the vests and then the security guards, our policy is that the security guards would in fact wear the vests.

Chairman **Cranston**. Why would there be any question about whether or not somebody operating the detector should have a vest?

Mr. **Principi**. We have a problem with our security officers not wanting to wear them because they are very, very uncomfortable over a long period of time. So, of the 66 hospitals that have vests approximately half of the officers wear them.

Chairman **Cranston**. What type of vest is recommended for purchase for police officers?

Mr. **Principi**. I will submit that answer for the record, sir.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

Bullet resistive vests prescribed for wear by VA police officers are to meet the National Bureau of Standards Class II Ballistic Level.

Chairman **Cranston**. I would like to know if they are supposed to be knifeproof as well as bulletproof when you respond.

Some VA medical centers are not requiring their police officers who are issued protective vests to wear them, as you indicate, while operating metal detectors or while on patrol. Do you have any policy on that? What is your personal reaction to letting them decide on their own?

Mr. **Principi**. We do not have a policy on the wearing of vests. Prior to purchasing the vests the hospital director inquires of the security guards, and directs that they do wear the vests, but again because of the uncomfortable nature of those vests, we find that a lot of our security guards do not wear them.

Chairman **Cranston**. A lot of the medical personnel don't like wearing rubber gloves, but they are required to do that for their safety. Do you feel that it is not advisable to require these people to wear the vests for their safety?

Mr. **Principi**. We are going to purchase vests, and there is a need for vests, and in this individual's view, they will wear the vests. We will have a policy on that very shortly.

Chairman **Cranston**. What special equipment, if any, is available to police officers to be used in a life threatening or other emergency situation, such as the brandishing of firearms or hostage taking on VA grounds?

Mr. **Principi**. Generally speaking, we have mace available to our security guards. A number of our facilities have batons. We do not have any firearms, to my knowledge, at any of our VA medical centers, and it is our general policy that we will not have firearms at any of our VA medical centers.

We will rely upon the cooperation and the good working relationship that we maintain with local, State, and Federal law enforcement agencies. We want to put more emphasis on that area, so that they would be able to respond in a timely fashion when there is a life threatening situation.

Chairman **Cranston**. When there is believed to be a really serious risk, should there be some other options available? Like nonlegal stun guns?

Mr. **Principi**. You raise a good issue with stun guns, Mr. Chairman. We will look at that and see if that is a viable option, and certainly we will report back to you. I just am not aware of any other weaponry that we should have in our facilities. Again, I am personally opposed to firearms at VA medical centers.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

Security Service has evaluated stun guns in the past and found them inferior to the chemical irritant weapon (mace). However, in response to this request we are in the process of re-evaluating the possible use of stun guns for VA police officers.

Chairman CRANSTON. Have you looked into plastic helmets, also?

Mr. PRINCIPI. I shall.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

Plastic helmets are traditionally not used by most police officers on routine patrol. Their use normally is reserved for dangerous crowd control situations. In response to this request we are in the process of evaluating the need for plastic helmets at VA medical centers.

Chairman CRANSTON. Since the Brecksville and Bronx VA Medical Center shootings, what changes have been made nationwide to provide better protection for VA police officers?

Mr. PIPER. Mr. Chairman, on the issue at Brecksville, as well as the issue at the Bronx, the then acting director of security service reviewed the incidents with the various security chiefs in the area. This was also put on a conference call to the directors of the hospitals, so that they would be made aware of the fact that when you have an imminent danger, you should call in the local police as soon as possible.

Chairman CRANSTON. What followup was there in respect to the Bronx?

Mr. PIPER. Mr. Chairman, as I mentioned before, there was a conference call to the directors of facilities on a normal Friday conference call, discussing the details of situations at the Bronx.

Mr. STEINBERG. Sam, if I may follow up for just one moment. I believe, with respect to Brecksville, you said that there was an advisory that local police should be called in in such life-threatening situations. That was, of course, not the situation at the Bronx.

So what Senator Cranston has asked, is rather than just outlining what occurred in the Bronx in a conference call, what actions were taken by the security service to try to avoid repetition of what occurred at the Bronx? Of course, at the Bronx, there was one officer on duty, despite the policy that there should be two running a magnetometer.

Mr. PIPER. Mr. Counsel, we have continually emphasized in calls and discussions with directors as well as security chiefs, the need, where they do have metal detectors, to have two police officers. Also, in reviewing the problems at the Bronx, it has been discussed with security chiefs the importance of trying to follow the regulations.

In reviewing the Bronx investigation it appears that the officer at the metal detector left his position and went after an individual that was leaving the building. In this case, I don't know what we could do to advise other people that they could avoid similar situations.

Mr. STEINBERG. It is our understanding that at the current time, despite what occurred at the Bronx, that the Bronx still has only one officer manning the metal detector. Do you have any information on that?

Mr. PIPER. I have no information. I would be glad to check on that and supply it for the record.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

The Chief, Security Service, VAMC Bronx, New York, reports the metal detector is operated by two police officers during times of peak ingress and by one police officer at other times.

Mr. STEINBERG. One further followup question on that matter. Following the Bronx shooting, which I believe was this past fall, what action did the security service take, other than to advise the local security services about the desirability of following the policy of having two officers at metal detectors? What action was taken to try to survey them, or check to see whether or not they were in fact following that policy?

Mr. PIPER. We made no attempt to survey. As you are well aware, we operate a decentralized system. We advise the directors of the hospitals of what the rules and policies are, and we would like for them to follow them.

Chairman CRANSTON. Have any medical centers requested protective vests and been denied?

Mr. PRINCIPI. Not to our knowledge, Mr. Chairman. We will provide that answer for the record.

Chairman CRANSTON. Let us know which ones, if any.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

A survey of all VA medical centers in June 1989 disclosed that Northampton, MA; Washington, DC; Hampton, VA; and Ann Arbor, MI, had denied requests from security units for protective vests. Ann Arbor, MI, plans to reconsider the request during the fourth quarter of fiscal year 1989.

Chairman CRANSTON. I understand that there are at least three VA medical centers, Manhattan, San Juan, and Miami, all in high crime areas, where the police officers operating stationary metal detectors have neither protective vests nor night sticks. Do you share our concerns about the safety of the police officers at those centers trying to disarm somebody without having any effective means to protect themselves?

Mr. PRINCIPI. Yes, I do, Mr. Chairman, but I know that that situation exists at airports as well. You see magnetometers and you see individuals clearing people through the metal detectors, and they are not carrying weapons, either.

I think it is a very difficult issue. I believe what we need to do is to ensure that we have good leadership, excellent training, recertification when necessary, and a high priority in resources, so that we get the best people and can retain those people in the VA security force.

I believe if we can really place some emphasis on those areas, we can go a long way toward reducing, if not eliminating, a lot of the problems that we have experienced in recent years.

Chairman CRANSTON. I think at airports—I have always observed at least two people at metal detectors, and there are armed backup people nearby. I don't know how good a comparison that is.

The VHS & RA medical administration service and its social work services each has structured formalized training programs that individuals must complete in order to become eligible to become a director of either of these services. Would not this kind of structured approach be an appropriate model to be used for selecting and training candidates for chiefs of security also?

Mr. PRINCIPI. Yes, it would, Mr. Chairman, and we will do so.

Chairman CRANSTON. Tony, the following questions relate to the July 25, 1988, killing of a Bronx VAMC police officer. You may want to call Mr. Harper on this. The officer who was killed was alone and operating a stationary metal detector. Do you know why he was operating it alone?

Mr. PRINCIPI. I would like to call on Mr. Harper, Mr. Chairman.

Chairman CRANSTON. The question is, why was this man operating the metal detector alone at the time of the killing?

Mr. HARPER. I discussed this with the chief of security, who has advised me, and I believe it is true, that they have a high turnover rate at the Bronx. Therefore, he simply was not able to man the detector with the number of people required.

Chairman CRANSTON. If another officer had been on duty, would it not be quite possible that the shooting could have been prevented by grabbing the assailant who had the firearm?

Mr. HARPER. We could speculate, but that would be difficult to answer "yes" to.

Chairman CRANSTON. How many officers are presently being used at the Bronx VAMC to operate the stationary metal detector?

Mr. HARPER. I do not know. I would suspect that it probably is still one.

Chairman CRANSTON. It is our information that there is still only one. Would you check that?

Mr. HARPER. Yes, sir.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

The metal detector is operated by two police officers during times of peak ingress and by one police officer at other times.

Chairman CRANSTON. The officer who was killed was wearing a protective vest that he had purchased for himself, apparently. Why hadn't the Bronx VAMC purchased a protective vest for this officer and others before the shooting?

Mr. HARPER. I do not know.

Chairman CRANSTON. Would you look into that and see if you could learn why not?

Mr. HARPER. Yes, sir.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

The medical center reports that the purchase of protective vests was discussed with the police officers, but they were not purchased because the officers were not interested in wearing them at that time.

Chairman CRANSTON. When were protective vests subsequently purchased for Bronx VAMC police officers?

Mr. HARPER. I don't have that information either, sir.

Chairman CRANSTON. Would you check that also?

Mr. HARPER. Yes, sir.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

Protective vests were obtained at VAMC Bronx in October 1988.

Chairman CRANSTON. Are all Bronx VAMC police officers presently required to wear protective vests and are they doing so?

Mr. HARPER. I would have to check on that.

Chairman CRANSTON. Please do so.

Mr. HARPER. Yes, sir.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

The medical center reports that all police officers except one wear the protective vest as required.

Chairman CRANSTON. The VA board that investigated the Bronx VAMC shooting concluded that if the next officer on the scene had been armed, this officer might have prevented the same officer from being shot the second time, and thereby might have saved his life. Do you agree with that analysis?

Mr. HARPER. No, sir, I do not.

Chairman CRANSTON. Why not?

Mr. HARPER. I read the entire testimony that was given by the individuals. The second officer who reportedly appeared on the scene gave conflicting testimony, and also the medical evidence suggests that the individual would have probably died anyway, even if a second round had not been fired into his body.

Chairman CRANSTON. Would you submit for us a copy of that report and any rebuttal from the VA?

Mr. HARPER. Yes, sir.

[The information requested is retained in the committee files.]

Chairman CRANSTON. I want to ask you about the January 31, 1986, shooting of two Brecksville VAMC police officers. It appears from VA's investigative report regarding the killings of two Brecksville VA police officers that one of the two officers involved might well have survived if that officer had been wearing a protective vest. Do you agree with that assessment?

Mr. HARPER. I would say that it is a possibility that he could have survived.

Chairman CRANSTON. Apparently, a Brecksville security service request for protective vests was denied by VAMC management a few months before the shooting occurred. Is that correct, and if so, do you know why that request was denied?

Mr. HARPER. I do not know whether that is correct.

Chairman CRANSTON. Could you check and let us know, and if so why?

Mr. HARPER. Yes, sir.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

The medical center reports that in 1984 a request from Security Service to purchase protective vests was declined due to a subsequent lack of consensus among police officers that the vests were desired and would be worn once individually filled and tested.

Chairman CRANSTON. The officer who investigated the shooting for the city of Brecksville police department officially advised VA that he did not believe that one of the VA police officers, given the circumstances, would have been killed had he been armed. Does VA agree with that assessment?

Mr. HARPER. The Board of Investigation reviewed that information from Lieutenant Hruby, and apparently did not agree with his conclusion, because they did not agree with that.

Chairman CRANSTON. Please provide us with any reports on that incident and the VA assessments of that.

Mr. HARPER. Yes, sir.

[The information requested is retained in the committee files.]

Chairman CRANSTON. After the shooting, Brecksville VA police officers commented that the mace weapon is ineffective against highly disturbed patients. VACO Security Service, in response to this concern, apparently requested information from the Department of Justice on this issue.

What information has VA received from the Department of Justice regarding the effectiveness of mace against highly disturbed patients?

Mr. HARPER. I am unaware that any such information was obtained.

Chairman CRANSTON. Would you check to see if that is the case?

Mr. HARPER. Yes, sir.

Chairman CRANSTON. What is VA's established policy and procedure for how best to deal with highly disturbed patients to the extent that mace may not be effective?

Mr. HARPER. The VA security service is not persuaded, from the information that we have, that mace is ineffective in the cases that you have alluded to.

I am not sure whether it is correct information. I am not sure that it is incorrect information at this time.

Chairman CRANSTON. Would you consult with the Department of Justice on this issue and see if there is any policy recommendation?

Mr. HARPER. Yes, Mr. Chairman.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

A review of information has confirmed that Security Service in Central Office did not request information from the Department of Justice regarding the effectiveness of mace against highly disturbed patients. In response to your questions regarding this we have recently contacted the Department of Justice but were unable to identify any unit of that Department able to provide us with the information requested. We therefore contacted the manufacturer, Def-Tech Corp., Rock Creek, OH, who advised us that disturbed persons as well as persons under the influence of drugs may not react to mace in the usual manner. At the VA Police School newly employed VA police officers are trained in techniques for controlling such individuals in a manner in which injury to both the officer and the individual is kept to a minimum.

Chairman CRANSTON. Tony, my predisposition at this stage is to alter the provisions of section 221 of S. 13, so that organizationally, the Security Service at VA's Central Office would report directly to the Office of the Secretary, leaving it up to the Secretary to assign responsibility within his office.

While not altering the direct line of accountability of chief to the medical center director, this arrangement would, it seems to us, give security matters more resources, more visibility, and more top management attention than they have received and will receive in

VHS&RA. Would that less restrictive approach lessen your opposition to the provisions?

Mr. PRINCIPI. Yes, it does, Mr. Chairman. I certainly intend to take a very aggressive look at our policies and some of the concerns and issues you have raised this morning.

I am troubled by some of the things I have heard, and quite honestly, intend to look into it to ensure that we dedicate the resources and the leadership to this program to ensure that we continue to have an effective police force at our VA medical centers.

Chairman CRANSTON. We were pretty certain you would be concerned, and that's why we rescheduled that hearing. I appreciate your responsiveness, and look forward to working together with you on this matter.

The Assistant Attorney General for the Criminal Division in a June 13, 1985 letter to then-VA Administrator Harry Walters noted that the course content of the VA police training school seemed appropriate, but urged that such training be extended to a minimum of 4 weeks. Do you know why the training has not been extended to that amount of time?

Mr. PIPER. After that letter was received, Mr. Chairman, in the VA, the then-director of the Security Service contacted the Attorney General's office and reviewed the various items with him. It was agreed at that time that they felt it was sufficient to take care of the training needs for our particular demands and our police force. We have since that time increased the number of training hours from 40 to 66.

Mr. STEINBERG. Would you please consult with the Department of Justice again at this point to ask them whether or not they believe the current length of the training program is adequate, and would you please let us know of any recommendation that they make in that regard, and, Tony, of your disposition of any such recommendation?

Mr. PRINCIPI. We shall do so.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

We are requesting that the Department of Justice evaluate the current training program given to newly hired VA police officers. We will advise you of any recommendations made by the Department of Justice and of any action taken by the Department of Veterans Affairs.

Chairman CRANSTON. Tony, as you know, chiefs of security from three VA medical centers are here today at my request to respond to questions from the committee in regard to various security matters. I have very much appreciated your cooperation and assistance in making them available to us.

I view the willingness of these three very fine individuals to appear here as a very positive thing, and I know I can rely on you to ensure that at no level of the Department will any reprisals or retaliatory actions be taken against these three employees for anything they may say, and I will count on you for that.

Mr. PRINCIPI. You can do that, sir.

Chairman CRANSTON. Thank you very much. We appreciate your always very straightforward responses. They are very direct and constructive. I know your concerns. I appreciate that and we look forward to working with you on these matters.

Senator Jeffords, do you have any questions?

Senator **Jeffords**. I have no questions, Mr. Chairman. I would just like to submit my written statement on these matters.

[The prepared statement of Senator Jeffords appears on p. 148.]

Chairman **Cranston**. Thank you. Tony, I am now going to ask Nina Shepherd, the CBO analyst for most VA programs, to come to the witness table to answer some questions about the costs of S. 1158, and about the cost-of-funds regulation. I would like to ask that you remain at the table so that you might also be able to comment in response to some of the questions and her answers to them.

Feel perfectly free, Tony, to respond or intervene in any way as we go along.

Nina, we appreciate very much your agreeing to help make the record of today's hearings a little more complete by your appearance and response to questions. I also note my personal appreciation to you for the fine cooperation you have shown to the committee and its staff in getting us a cost estimate on S. 1158, and most especially for your comparison of the costs of S. 1158 and H.R. 1415.

The Administration has argued that nonrecourse loan asset sales are much better from the Government's point of view than recourse sales, because nonrecourse sales provide several advantages in loan management, such as freeing VA personnel from loan servicing.

Elimination of the costs of future property acquisitions that are necessary for recourse sales, elimination of risks from contingent liabilities, and more certain budgeting of future cash flow—can you comment on those asserted advantages?

TESTIMONY OF NINA SHEPHERD, ANALYST, CONGRESSIONAL BUDGET OFFICE

Ms. **Shepherd**. Yes, Mr. Chairman. In the Veterans' Administration's (VA) report to the committee on the loan sales conducted in fiscal year 1988, they listed five management improvements that were found to justify the slight decrease in the net, long-term proceeds received from nonrecourse as opposed to recourse sales.

In my analysis of their list of management improvements, I find that only one has validity. The first improvement on the VA list, for example, supposed that competition for the service of the loans that were held by the trust would improve the servicing and, thus, reduce foreclosures and delinquencies.

However, the servicer for the two trusts that were established in the 1988 sales is the primary servicer for loans sold in the past with recourse. Given the same servicer, there is no reason to expect any change in the servicing patterns or foreclosure rates.

The second improvement on the VA list was elimination of future property acquisitions. This is an advantage, but the effects are already factored into the comparison of costs and proceeds between the two sales strategies.

The third improvement listed was in cash flows, which would be enhanced by the elimination of the contingent liability inherent in recourse sales. In the structured sales the VA carried out in 1988, the contingent liability resided in the subordinate securities, which continue to be held by the VA. Therefore, the VA is still at risk for future delinquencies. The effects on the cash flow is the same as the effects from recourse sales.

A fourth management improvement listed was the elimination of the need for borrowing authority associated with recourse sales. Since this borrowing authority is not appropriated, it does not affect outlays or any fund operations. The borrowing authority is simply a line item in the budget. That is not significant management improvement.

The one valid improvement on loan sales by the VA would be in the effect on personnel. Elimination of the need for servicing repurchased vendee loans, as well as for managing and disposing of properties from foreclosed loans, would free some staff time to devote elsewhere.

The cost of staff time is included in the cost comparison. However, personnel ceilings on work for loan guaranties sometimes constrained effective operation. This was even true in periods when appropriations to the fund were adequate.

Freeing some staff time would increase the personnel ceiling, which would not come about otherwise. This would be a small management improvement in itself. However, this improvement is not sufficient to warrant the additional cost of nonrecourse sales.

Chairman **CRANSTON**. Thank you. I want to welcome to the witness table Mr. John Vogel, VA's Chief Benefits Director. Thank you for being with us. Do either of you have any comments on what Nina said?

Mr. **VOGEL**. Mr. Chairman, the initiative of the administration to sell these assets, these loans, on a nonrecourse basis, taken together with all the commentary that Ms. Shepherd spoke of, made that initiative one that should have been undertaken.

The opportunity for the VA to improve the documentation of loans, to improve on the servicing of other loans, other guaranteed loans, by a freeing up of VA personnel who otherwise service vendee loans, the freeing of the Government of the contingent liability which laid out there in the event that the loans went bad, and we know that about 13 or 14 percent of vendee loans did in fact go bad, in toto made it an enterprise worth undertaking.

We have experienced slightly better yields with various mixes of the senior and junior certificates offerings, but in toto, the yield has not been that which we have historically received in selling loans on a with recourse basis. There is no question about what the total experience has been with the nonrecourse sales.

Chairman **CRANSTON**. Thank you. Nina, I know that first question was a very complicated one. If the rest of these—because we have a lot of ground yet to cover this morning—you can try to be pretty brief and concise and then expand for the record, if necessary, in writing.

Would you describe the costs to the Government that are involved in a nonrecourse loan asset sale, and those involved in a recourse sale, and what kinds of entities receive various payments?

Ms. **SHEPHERD**. I beg your pardon, I did not hear the last part of that?

Chairman **Cranston**. What kinds of entities receive the various payments.

Ms. **Shepherd**. On a recourse sale, the Government has the liability of repurchasing loans as they default. As to how nonrecourse sales have been structured, the Government holds the subordinate certificates from which the costs of loan defaults are drawn.

So instead of having the contingent liability of an uncertain cost in the future, the nonrecourse sales carry a contingent liability of an uncertain reduction in future income. This affects the revolving fund in essentially the same way.

Chairman **Cranston**. Do you agree that the proposed regulation on the cost of funds is not logical, because it ignores in the equation the cost of funds for paying off the guarantee?

Ms. **Shepherd**. Yes, Mr. Chairman, I do.

Chairman **Cranston**. Putting aside the 50-percent disregard in S. 1158, does the formula in S. 1158 correct the logical error in VA's proposed regulations?

Ms. **Shepherd**. Yes, it does. The guarantee amount would be taken from the cost of the proposed acquisition before the interest is calculated.

Chairman **Cranston**. How would VA's proposed cost of funds regulation affect the rate of no-bids comparatively?

Ms. **Shepherd**. I have estimated that the regulation would increase the rate from the current level of 25 percent to about 35 percent.

Chairman **Cranston**. If the cost of funds regulation were postponed until about October 1, 1989, would that impair VA's ability to pay the valid guaranty claims of lenders in a timely manner?

Ms. **Shepherd**. I don't believe so.

Chairman **Cranston**. Any other?

Mr. **Vogel**. No, Mr. Chairman.

Chairman **Cranston**. How would the formula in S. 1158 affect the current rate of no-bid?

Ms. **Shepherd**. I have estimated that it would increase the rate to about 29 percent.

Chairman **Cranston**. If S. 1158 were enacted, when do you project that the new guaranty fund would first show a deficit requiring a deficiency appropriation, and how does this compare to H.R. 1415?

Ms. **Shepherd**. I have estimated that under S. 1158 the new fund would first show a deficit in fiscal year 2000. I have estimated that under H.R. 1415 the new fund would first show a deficit in fiscal year 1999.

Chairman **Cranston**. Could the VA give us for the record your estimates on both of those issues?

Mr. **Vogel**. We would be pleased to, Mr. Chairman.

[Subsequently, the Department of Veterans Affairs furnished the following information:]

VA estimates that the new insurance fund established under S. 1158 and H.R. 1415 would begin running a deficit in the fourth year (fiscal year 1993).

Chairman CRANSTON. Does your S. 1158 projection include any use of the Secretary's discretionary authority under the bill to make limited increases in the fees?

Ms. SHEPHERD. No, it does not.

Chairman CRANSTON. Am I correct, then, that you disagree with the prediction in the Peat Marwick study of H.R. 5221, the predecessor of H.R. 1415, that the new fund would begin showing a continuing deficit in 1993?

Ms. SHEPHERD. Yes, I do disagree with that. The Peat Marwick study uses considerably more pessimistic default rates than does my analysis.

Chairman CRANSTON. Could you give us some edification on that for the record?

Ms. SHEPHERD. Yes, Mr. Chairman.

[Subsequently, Ms. Shepherd furnished the following information:]

The Peat Marwick study estimated that 13 percent of the loans originated in any one year would be foreclosed by the 10th year after origination. My model assumes that less than 11 percent of originations are foreclosed in the first 10 years. This difference does not fully explain the variance between the Peat Marwick estimate and the CBO estimate, however. Unfortunately, the details of the Peat Marwick estimate are not presented in the study in a fashion that would allow me to make direct comparisons between the variables of the two models.

Chairman CRANSTON. Nina, I want to thank you again for the very excellent informal cost estimate you provided within our very short deadline. That was not an easy one to meet.

I am especially interested in the direct comparison you make in your last chart between S. 1158 and H.R. 1415. On the bottom row of the last chart, which indicates the additional savings that S. 1158 would generate beyond those under H.R. 1415, am I correct that about $496 million of the $521 million that S. 1158 saves in fiscal year 1990 over the savings in H.R. 1415, is attributable to the provision in S. 1158 extending the authority for nonrecourse loans through 1990, whereas H.R. 1415 would prohibit that?

Ms. SHEPHERD. That is correct.

Chairman CRANSTON. Putting aside the extension for nonrecourse sales, S. 1158 would still save about $25 million more than H.R. 1415 in fiscal year 1990, is that correct?

Ms. SHEPHERD. That is correct.

Chairman CRANSTON. For fiscal year 1991 and beyond, your estimates for both bills assume a return to recourse sales. So adding $25 million for 1990 and the figures you indicate for subsequent years, it seems that S. 1158, aside from the fiscal year 1990 savings for the nonrecourse sales, saves about $363 million in outlays more than H.R. 1415 during fiscal years 1993 and 1994. Is that correct?

Ms. SHEPHERD. That is correct.

Chairman CRANSTON. I am amazed you could follow all of that.

Ms. SHEPHERD. I assume your addition is correct.

Chairman CRANSTON. Thank you, Nina, and thank you, John, for being with us today.

Mr. VOGEL. Thank you very much, Mr. Chairman.

Chairman CRANSTON. We now go to the VSO panel. Will they please come forward—Dick Christian and Jim Hubbard of the

Legion, Dennis Cullinan of the VFW, Rick Schultz of the DAV, John Bollinger of the PVA, Rick O'Dell and Paul Egan of VVA.

Welcome to each of you. Dick, I am sorry to know of your father's recent death, and I express condolences.

Mr. CHRISTIAN. Thank you, Mr. Chairman.

Chairman CRANSTON. We have a special welcome to you on your first appearance at one of our hearings.

Let's start with DAV. Rick, would you please summarize your statement in 5 minutes or less? I want to remind you of the 5 minute rule, the green light, the bell, and the red light.

STATEMENT OF RICHARD F. SCHULTZ, ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. SCHULTZ. Thank you, Mr. Chairman. I will certainly try to stay within that time limit.

On behalf of the more than 1.3 million members of the DAV, and its Ladies Auxiliary, I wish to thank you for the invitation to appear here today.

Mr. Chairman, before addressing the issues before us, we would first like to take the opportunity to thank you and the members of the committee for your efforts to ensure that our Nation's veterans will continue to have a viable loan guaranty program. Clearly, the efforts of the committee over the last several years have had a positive impact on the operation of this valuable benefit program.

Also, Mr. Chairman, this committee's efforts to address the complex issue of Agent Orange and its effects on our Nation's military forces who served in Vietnam is highly commendable.

Mr. Chairman, your measure S. 1158 and H.R. 1415 are similar in that they both establish a new home loan guaranty program within the VA that will protect veterans from future financial loss, should unfortunate circumstances cause their loans to go into foreclosure. As you know, these measures differ somewhat in their approach to improving the Home Loan Guaranty Program.

In dealing with the issue of releasing veterans from liability to the DVA, the House measure provides such relief except in those instances where there are indications of fraud, misrepresentation, or bad faith.

Your measure, Mr. Chairman, adds to those exceptions by also stipulating that in those cases in which the default is not for reasons not beyond the veteran's control, that the individual can also continue to be liable to the VA for any losses incurred.

We agree that individuals who deliberately cause a loan to go into foreclosure should not be indemnified against loss. However, we believe the addition of reasons not beyond a veteran's control are unnecessary to maintain the integrity of the Home Loan Guaranty Program, and may cause some deserving veterans to be denied indemnification.

Both S. 1158 and H.R. 1415 address the issue of the no-bid formula. When deciding what action the committee will ultimately take on this controversial issue, we urge the committee to keep in mind the purpose for which the program was created, and endeavor to strike a fair balance between the needs of veterans, their Government, and the mortgage lenders.

There is a provision of H.R. 1415 that is not included in S. 1158 that addresses the issue of waiver of recovery of indebtedness. We believe, Mr. Chairman, that the VA frequently denies claims for waiver of indebtedness for service-connected veterans in receipt of compensation, even though there may be a proximate balancing of fault in the creation of the indebtedness, since they know they can recoup this indebtedness from future compensation payments.

We believe the waiver modification contained in H.R. 1415 would be beneficial for all veterans and result in a more equitable waiver of determinations.

S. 1153, the Veteran's Agent Orange Exposure and Vietnam Service Benefits Act of 1989 represents, in the DAV's view, a comprehensive and meaningful measure aimed at addressing the concerns of Vietnam veterans who may have been exposed to Agent Orange. The DAV fully and strongly supports granting presumptive service connection for non-Hodgkins lymphoma, although we do favor creating a permanent presumption for these diseases.

With respect to the issue of providing disability and death benefits related to soft-tissue sarcoma, we remain of the opinion that there is insufficient scientific and medical evidence, or sufficient documentation to support such a provision.

We also support the granting of a presumption for service connection for chloracne, or other acne form of diseases consistent with chloracne.

The DAV also supports the establishment of a tissue archiving system, the funding of appropriate independent pilot studies, enhancing the Department's outreach efforts, reporting to the Secretary of Health and Human Services on research being conducted, extending the health-care services based on exposure to Agent Orange, and making certain technical amendments to the reporting procedures related to the Air Force Ranch Hand study.

Mr. Chairman, this concludes my testimony. I would be pleased to respond to any questions you may have.

[The prepared statement of Mr. Schultz appears on p. 177.]

Chairman CRANSTON. Thank you very much. Dennis, do you want to go next?

But first, Senator Al Simpson, do you have any remarks you would like to make at this stage of our proceedings?

OPENING STATEMENT OF SENATOR SIMPSON

Senator SIMPSON. Mr. Chairman, I thank you, and thank you, gentlemen, for your courtesy, and always yours, Mr. Chairman, since I chaired the committee and you were ranking member, and vice versa—one was more pleasant than the other, I can tell you, but——

[Laughter.]

Senator SIMPSON. I have some remarks. My remarks are about the Agent Orange issue. So, just to say you and I remember how well we worked so closely on that in 1984 and how we put together the Veterans' Dioxin Radiation Exposure Compensation Standards Act. I thought that bill made some substantial procedural improvements in the disposition of veterans' claims for disability compensation, based on either the exposure to Agent Orange or to ionizing radiation.

I am a little disturbed, because I know that what we intended to do in that bill was to ensure that disability compensation would be provided to veterans for conditions which were shown by sound scientific and medical evidence—and I remember the words, I remember how we grappled with them, I remember how we got them into the legislation—sound scientific and medical evidence to be connected to the exposure to the herbicide.

I said at the time that many veterans expected that act to be a definitive solution to their concerns. It was not intended to be. It was intended to be a responsible and reasoned response to veterans' serious concerns about their health which took into account the need to maintain the integrity of the VA's service-connected disability compensation program.

We keep slipping away from that, continually. I also stated at the time that the bill must not be allowed to undermine the principles of service connection. That is a principle that is being continually eroded. Everybody must be players in it, or it wouldn't be getting eroded.

Congress creates more and more presumptions. In the last Congress we added at least 17 conditions to the 40 diseases already presumed to be service connected. I think that is a dangerous trend, Mr. Chairman. The veterans who, during their military service, are exposed to conditions and injuries that have a causal connection with diseases or conditions that develop later should have service connection for those conditions.

I have not a single problem with that—none. But today the question of what constitutes a service-connected injury or illness is less clear than it once was. A bullet wound or a bayonet cut is one thing, but the hazards of the modern training ground are a very much different thing—quite another—as are the hazards of modern conflicts.

So I guess I would just leave it, it seems to me that at least in this committee, with your innate and authentic compassion, we have always recognized our responsibility to care for those whose injuries and illness were a consequence of military service. The extraordinarily varied network of veterans' programs and benefits is vivid proof of that, and of our regard for the sacrifices made by the women and men in uniform.

The compensation program is designed to care for those veterans disabled in the line of duty. The rules and regulations for that program are designed to make certain that no veteran's reasonable claim of disability resulting from military service is overlooked or ignored.

Well, the Secretary has decided that the VA will not appeal the ruling in the Agent Orange case, in which the judge determined that Congress apparently really did not intend that there be a causal relationship between exposure and the disease, and I can tell you that I am sure that that is exactly what Congress did intend.

But never mind about that. The decision will stand; the VA will have the new regulations out by October governing circumstances under which certain diseases will be service connected, and it is committed to do that.

But I will tell you—today we are considering legislation that says we can't wait for the VA to revise its regulations in accordance with the court ruling. As Tony Principi, known to us all, pointed out in his testimony, we may be creating further delay in resolution of this issue.

I know there are many veterans who feel that their ill health is solely related to the exposure to Agent Orange. If that is the case, then I don't know how you handle the Ranch Hand Study, because that's where they really got exposed to it, and there are no great differences there at all.

So it is a very real and pressing concern to them, I know that. It is emotional; it is a concern the VA works on, we seem to be doing it. It seems we may be hindering resolution with this bill. It is not an easy issue to address. We have to deal with good old emotion, fear, all the things that lead to bad legislation.

Many suffer from diseases they feel are connected with exposure. The compensation system was intended to compensate those with conditions that could be scientifically and medically linked to service, and the VA is now working to resolve the matter. I question how necessary or useful it would be for us to intervene at this time, Mr. Chairman.

I think we ought to wait and not get involved at this point, but we will be revisiting this again and again and again because we will vote on a debt limit extension in a few weeks of $3 trillion, $100 billion. That is the debt limit extension of the United States. The budget this year is $1 trillion, $200 billion.

Now, what the hell? Who is going to pay for that? Well, I've got a great idea. I've got a new granddaughter, and she will be paying for it in the year 2030, and the year 2040, while we sit and just continue to crank it out. We ought to all get in as players or get out as representatives.

Thank you.

Chairman CRANSTON. Thank you Al, very much. I know your continuing concerns. I recognize them. I know they are deeply felt.

Senator SIMPSON. I appreciate it always.

Chairman CRANSTON. We have worked on these matters together. We have now and again had differences, but we've also seen many things together and will keep on doing that.

Senator SIMPSON. I regard you highly.

Chairman CRANSTON. Likewise here, Al. Thank you very much.

Senator SIMPSON. Thank you.

Chairman CRANSTON. Now back to you, Dennis.

STATEMENT OF DENNIS M. CULLINAN, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. CULLINAN. Thank you, Mr. Chairman. On behalf of the entire VFW membership, I wish to thank you for inviting our participation in today's hearing.

Under consideration today is legislation impacting on both the Agent Orange issue and the Home Loan Guaranty Program. As you know, the VFW has taken a very active interest in these two issues through the years and we are very gratified at being invited to take part in today's hearing.

I will start with a discussion of the Agent Orange legislation, which is S. 1153, the Veteran's Agent Orange Exposure and Vietnam Service Benefits Act of 1989, which would provide interim disability benefits for Vietnam veterans suffering from non-Hodgkins lymphoma and soft tissue sarcoma, and provide survivor benefits for their spouses through April 15, 1992.

It would also establish a permanent presumption of service connection for chloracne in Vietnam veterans, whose chloracne became manifest within 1 year of their service in Vietnam.

Addressing the aforementioned, we believe that there is a sufficient body of suggestive evidence to be able to say that non-Hodgkins lymphoma and soft tissue sarcoma are attributable to Agent Orange. We would even prefer to see these made permanent presumptions, but we are very thankful for what this bill does.

With chloracne, we think the body of evidence goes beyond the suggestive. There is a pretty clear link. So we very much support these provisions.

S. 1153 would also provide for the VA to conduct and support ongoing studies and research into the Agent Orange issues, along with providing for continued congressional oversight. Again, we support that very much. The VFW has made the resolution of the Agent Orange situation a top priority for many years.

I was gratified to play a role in the formulation of this particular legislative initiative, both as it was introduced in the waning days of the 100th Congress, and in its current manifestation.

Although we strongly contend that much remains to be done with respect to this issue, we also believe that this particular legislative initiative is an important step in the resolution of the herbicide tragedy. I would add to that we wish to extend our thanks to Secretary Derwinski for his acceptance of the court decision which works in the favor of veterans suffering from Agent Orange related disabilities.

Now turning to the Home Loan Guaranty Program, S. 404 would extend certain DVA home loan guaranty provisions. Although legislation is under discussion today which would essentially create a new program, we will discuss these provisions as they would impact the current program. S. 404 would provide a 2-year extension of the 1 percent fee under the VA guaranteed loans.

The VFW is on record as opposing fees, generally speaking, on all veterans' benefits. We can only support this extension inasmuch as it would thwart any effort to increase the home loan guaranty fee, which has in the past and continues to be attempted.

With respect to the proposed extension of the no-bid formula the VFW has no objection.

Mr. Chairman, I will now turn to legislation which was introduced in the House, H.R. 1415, by the Chairman of the Subcommittee on Housing and Memorial Affairs, Mr. Staggers, the Veterans' Home Loan Mortgage Indemnity Act of 1988. In our assessment, this legislative proposal would essentially create a new and more fiscally sound home loan program.

The VFW favorably notes that the 1.25 percent indemnity fee that would be charged veteran borrowers would in turn release these individuals from liability in the event of default, and provide them with indemnification to support this.

The VFW supports this legislative proposal inasmuch as it would serve to strengthen and preserve a program that has proven to be an invaluable asset to both veterans in the Nation, while providing veterans with a highly desirable additional mortgage protection in the event of foreclosure.

Even so may we emphasize that we may only back this proposal with the understanding that once the VA Home Loan Program has been restored to financial health, that the mortgage indemnity fee itself will be eliminated. In other words, once the program is truly self-sustaining, the fee could be done away with completely.

The next bill I will address with respect to the home loan program is the bill introduced by yourself, Mr. Chairman, S. 1158. That is the Veterans' Home Loan Guaranty Restructuring and Solvency Act of 1989. As is the case with H.R. 1415, this bill would create a new and financially reinvigorated VA Home Loan Program.

This innovative and complex legislative initiative arose out of many years of hard work by yourself, by the ranking member of this committee, and the other distinguished members of the Senate Veterans' Affairs Committee. We very much respect the work that you have put into it, and we embrace this particular legislative proposal as a benign and beneficial result of that work.

Both H.R. 1415 and S. 1158 would establish a new revolving fund to finance the loan guaranty program. Both would relieve veterans from liability in the event of foreclosure, except in the case of fraud or misrepresentation. The Senate bill adds the exceptions for cases in which the default is not for reasons beyond the veteran's or assumptor's control.

The VFW does not support this particular exemption. We find the language to be vague and potentially dangerous to veterans. We see it as being vulnerable to an overly strict bureaucratic interpretation that would subject veterans to harm where it was really undeserved.

Both the House and Senate bills would increase the current loan fees from 1 to 1.25 percent but decrease it incrementally, according to the amount of down payment made. We have no problems with these provisions.

One problem we do have is that the Senate would provide the Secretary with the authority to raise this fee as needed, as the need is perceived by the Secretary according to rules established by him. Once again, we object to this proposal, inasmuch as we see this as a way of too easily raising the fee.

In other words, we recognize the VA Home Loan Program as being a veterans' benefit program that should not necessarily have to be self-sustaining. We want it to run as economically as possible. We want it to work well for the least number of Federal dollars as possible.

We fear that if the Secretary were provided with the authority to "up" the fee, it would suddenly be seen in the light of a business model. That is going against the line of the program.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Cullinan appears on p. 197.]

Chairman CRANSTON. Thank you very much. Thank you for stopping right at the bell.

Mr. Bollinger.

STATEMENT OF JOHN C. BOLLINGER, ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

Mr. BOLLINGER. Mr. Chairman, I wish to thank you for this opportunity to express the views of PVA concerning the home loan legislation and the Agent Orange legislation before us today.

We wish to first express our appreciation to the committee for its commitment to the long-term solvency of the DVA Home Loan Guaranty Program.

With billion dollar appropriations becoming the norm, we look forward to the enactment of legislation in the near future which will reverse the trend of the present fiscal crisis which threatens this once healthy, self-supporting benefit program. You have given us good reason to be optimistic about the various legislative proposals before us today.

We have testified on several occasions on H.R. 1415, passed by the full House earlier this month. We are on record as supporting that bill, and believe it contains a number of provisions which, if enacted, will begin to resolve some of the major problems facing the home loan program today.

We are also pleased to support many of the provisions in your bill, which has the same fundamental intent as H.R. 1415. We believe several of your initiatives would greatly enhance the basic indemnity philosophy that provides the basis for both of these pieces of legislation.

We endorse your theory that a larger downpayment should reduce the likelihood of default by increasing the buyer's equity in a home. We therefore support your provision to reduce the loan fee for those who are able to make a 10 percent downpayment. We also support your provision which requires the Department to pay the loan fee which is waived in the case of service-connected veterans.

Section 2 of S. 1158 authorizes the Secretary to increase all loan and assumption fees. PVA does support the requirement of a Secretarial determination, input from both Veterans' Affairs Committees and review by the CBO. However, we firmly believe that the final determination on whether to raise or lower such fees should be the result of legislation.

We support the sale of vendee loans with or without recourse, but only if 90 percent of the unpaid balance is received. In our written statement, I suggest that perhaps this percentage could be lowered to 85 percent, which is similar to the percent of par, that the Department was able to receive in their nonrecourse sale in March of this year.

We support that section of your bill which provides the availability of an additional $10,000 for guaranty entitlement in geographic areas where housing costs are extremely high. We would prefer to see such entitlement based on factors which would specifically reflect high cost areas, as opposed to entitlement based on the payment of a fee.

We strongly endorse the bill's provision which requires lenders to notify the Department when they refuse to accept a veteran's partial payment on a DVA loan. The area of loan servicing represents one of the most critical aspects of the program. This provision of your bill would enable the Department to target veterans who are good candidates for successfully cured loans.

Your home loan bill, coupled with H.R. 1415, will go a long way toward restoring the Department's home loan guaranty service to a financially solvent benefit program. Once again, we appreciate your commitment to that goal and we look forward to enactment of legislation soon.

Mr. Chairman, we commend you and Senator Daschle and other cosponsors of S. 1153 for your efforts to provide meaningful Agent Orange legislation for those exposed to Agent Orange. We are most hopeful that as a result of the provisions in your bill, the Department of Veterans Affairs will be able to determine, based on independent scientific reviews, whether permanent disability benefits should be given to veterans with diseases associated with exposure to Agent Orange.

We therefore fully support that provision of your bill and the provisions which authorize the Department to evaluate areas of future research, as well as improve the effectiveness of ongoing evaluations.

We are also pleased to support the proposed extension of priority medical services for veterans exposed to both herbicides and ionizing radiation.

Finally, we support the establishment of a permanent presumption for disability compensation for chloracne as expressed in your bill.

By the terms of our national resolution, PVA cannot support the provisions contained in S. 1153 which provide temporary benefits for Vietnam veterans suffering from non-Hodgkins lymphoma and soft tissue sarcoma.

We believe at this time that it would be far more realistic and far more consistent with existing procedures for this granting of compensation benefits to allow the Department to complete their review in accordance with the recent California court decision and to allow the National Academy of Sciences or other independent scientific organization to make recommendations to the Department regarding the relative weight of cause and effect evidence for the purpose of granting permanent compensation.

Thank you, sir.

[The prepared statement of Mr. Bollinger appears on p. 210.]

Chairman CRANSTON. Thank you very, very much. I appreciate your testimony and your presence.

Rick, do you want to proceed now? Can I ask you to wait? Senator Daschle is coming now, and I know he has got a tight time schedule, so we'll take him right now for testimony on the subject of Agent Orange where he has done such very fine effective leadership work.

STATEMENT OF HON. THOMAS A. DASCHLE, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator **Daschle**. Mr. Chairman, I thank you very much, and I apologize to Mr. O'Dell, and to all of your witnesses. I will be exceedingly brief, because I know you have a full schedule.

Let me just commend you, Mr. Chairman, for the role you have played in advancing Agent Orange compensation legislation. I don't know of anyone who has been more accommodating and more willing to work with us to resolve this dilemma after all these years. I have the highest admiration for you and the leadership you have shown in this whole area.

Chairman **Cranston**. Thank you very much, it is a pleasure to work with you.

Senator **Daschle**. I think the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989 can be summarized in four ways. First, it provides the interim compensation that we have felt is necessary for so long. Second, it provides for essential research and scientific review as we go through the difficult years ahead. Third, it improves outreach to veterans who may have been harmed by Agent Orange. And fourth, it continues VA medical treatment and begins the search for treatment for dioxin exposure itself.

I have to say, as I call upon this committee to pass this legislation, that we now have a different environment over in the Department of Veterans Affairs than we have had in the past. Secretary Derwinski deserves a great deal of credit for his courage, his willingness to approach this issue, and his sensitivity. He has given a lot of veterans a tremendous amount of new-found optimism that I think is very appropriate and long overdue.

This bill is going to complement the Secretary's efforts in every way. It in no way is intended to compete with them. It is intended to be complementary, and will be so, as we go through the next few years.

Mr. Chairman, the last thing I will say is very simply that we see the situation with Agent Orange in a way much the same as those who have expressed concern over the years, as we have, for POWs. POWs were in a prison on foreign soil. In many respects, Agent Orange victims, too, are prisoners who remain captive to serious illness upon their return.

It is a different kind of prison, but Agent Orange prisoners are just as much victims of the war, and their situation must be acknowledged and be addressed in a way that understands that new wars have brought new wounds. These new wounds have not been properly addressed in the Congress. I believe this bill will go a long way toward meeting our responsibility in that regard and toward creating the kind of program necessary to at long last release these prisoners from bondage.

Thank you, Mr. Chairman.

[The prepared statement of Senator Daschle appears on p. 233.]

Chairman **Cranston**. Thank you very much for that very eloquent and forceful statement. I think that comparison to prisoners and to wounds that develop after the war is a very good way to put it.

We greatly appreciate your staff's cooperation, too, as we have worked together on this, and the understanding and flexibility that they and you displayed as we have worked on this. I think S. 1153 is a very good bill now, and we can be proud of what we have done and how we have worked out the differences that many people had over how to approach this, so on we go.

Thank you very, very much.

Senator DASCHLE. Thank you, Mr. Chairman.

Chairman CRANSTON. Now we return to you, Rick. I know that Senator Kerry wanted to be with us also, today. I am not sure that he is going to make it. He and Tom Daschle have been very effective partners in this effort.

STATEMENT OF RICHARD E. O'DELL, NATIONAL VICE PRESIDENT, VIETNAM VETERANS OF AMERICA, INC., ACCOMPANIED BY PAUL S. EGAN, LEGISLATIVE DIRECTOR

Mr. O'DELL. Mr. Chairman, the Vietnam Veterans of America appreciate this opportunity to present its views on legislation designed to address the issue of Agent Orange.

In the cases of those veterans having been exposed to dioxin, the principal contaminant in Agent Orange, or other toxic herbicides during military service in Southeast Asia or elsewhere, progress toward either providing disability compensation or ascertaining any measure of certainty as to the likely effects of exposure has been grindingly slow.

The long history of the Department of Veterans Affairs to this issue has built up an enormous reservoir of mistrust and cynicism among Vietnam era and other veterans toward the agency. Even today, we hear that somehow S. 1153 would delay the compensation of veterans suffering from exposure to Agent Orange.

Quite clearly, there is nothing in this legislation that would prohibit the VA from promulgating rules under which they could compensate veterans for exposure. The recent decision by Secretary Derwinski not to appeal the ruling in DVA's lawsuit stands as perhaps the first positive note from the agency on this issue in over a decade.

As magnanimous as the Secretary's decision genuinely was, reliance now on the Department of Veterans Affairs to write dispassionate and fair new rules governing compensation under Public Law 98-542 cannot now serve as a substitute for legislation.

At the outset of any discussion of S. 1153, it is appropriate to state the fact that this legislation is a compromise resulting from several months of negotiations. Necessarily, as a compromise bill the legislation has a few weak spots. In some areas, it may go about as far as it can, but in other areas, it fails to go far enough.

For example, this legislation allows for only interim disability benefits for non-Hodgkins lymphoma and soft tissue sarcoma. These disability compensation benefits should be permanent.

Apart from the issue of granting interim disability compensation to veterans suffering with either of the two diseases named in the bill, the heart of this measure would establish a mechanism for an unbiased nongovernmental review of the science for the purpose of ascertaining what reasonably could be concluded from the science about connection between other diseases or disabilities and Agent Orange.

Just as this is the heart of the bill, it necessarily is the part deserving the greatest care and legislative draftsmanship. The instructions provided in the bill to the National Academy of Sciences as to how the science should be weighed in determining what diseases have a positive relationship to exposure, must be clearly understood by all who participate in the NAS review.

It must, above all else, be understood by the NAS that their review of the science does not require strict cause and effect relationships between exposure and disease in order to make a finding of a positive and therefore compensable relationship.

Mr. Chairman, the VVA, having worked closely with some of the principal cosponsors on this legislation, supports it. We urge the committee to move forward with it as soon as is practical.

It is our sincere hope that this, or some stronger version of it, will be enacted. It is most certainly hoped that whatever is cleared by the Congress will actually accomplish its advertised goals. The veterans who rely on the Congress for a meaningful resolution to the Agent Orange issue deserve some assurance that this latest legislative effort will be both serious and substantive.

Thank you.

[The prepared statement of Mr. O'Dell appears on p. 237.]

Chairman CRANSTON. Thank you very, very much, Rick.

Senator John Kerry is now with us. He is one of the prime movers on the Agent Orange front, and provided great leadership, along with Tom Daschle. John, we would be delighted to have you testify before we complete this panel.

Tom Daschle beat you into the room a few minutes ago.

STATEMENT OF HON. JOHN F. KERRY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KERRY. He also beat me out. He's pretty fast. That's a sign of how short and brief I should be, I have no doubt.

I am going to be extremely brief, Mr. Chairman. I appreciate your indulgence and I thank the members of the panel for letting me slide in quickly.

I have testified before on this at some length, and that testimony is a matter of record, and I am not going to go through those details again today.

I would first of all like to thank you, Mr. Chairman, and your staff, for your assistance in helping us to move this bill forward, and I appreciate enormously your continued concern for these issues over the years, but particularly at this moment in time.

I want to thank Senator Daschle also, who has been a partner in this effort with me over the years. He has really been key to helping this move forward, and were it not for his insistence and adamancy regarding it, we simply would not be here.

I would also like to thank all the groups who have been involved in arranging this, from the Vietnam Veterans of America, to The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans and so forth, the Order of the Purple Heart, the Jewish American Veterans, everyone has really had one interest or another that has been part of it.

I recognize that this is a compromise bill. There are many of us who would like to make it permanent. I just heard a plea for permanence now. There are those who think it goes too far. The nature of the legislative process is compromise, obviously. It is also to try to serve the needs of those for whom we are legislating.

I think this bill does that, obviously in the interim. The new parts of this bill that I think are improvements this year are the study that will require the NAS, hopefully, and if they decline, the GAO, to provide us with an assessment of the sciences at this point.

But this provides us with the benefits until the time that we know the Centers for Disease Control study will be completed and reported on.

And it allows, I think most importantly, for the Congress, through the expedited process to come back and revisit the issue, at that moment in 1992 when we ought to have enough evidence on the table to permit us to really know whether it should be extended or made permanent, and I suspect the decision will be permanent. I hope it will be, and perhaps give us even greater guidance as to where we go beyond that.

Mr. Chairman, the only comment I would make today on the merits of this bill are that it has been a long process trying to reassert what should be the appropriate relationship between the VA and the veterans' community that it serves. I think Secretary Derwinski moved appropriately, and wisely, to help remedy that relationship by not appealing the decision of the court, and by working with us to try to guarantee this process does move forward.

But the codification of this, and the congressional response to it, is an essential part of the furthering of that relationship and of our assisting veterans across this country to understand that we are backing the needs to have that relationship become one of full partnership rather than adversarial.

I think this bill helps to do that. I know that veteran friends of mine who are suffering from diseases associated with Agent Orange, like Joe Campbell or Joe Kilroy of Massachusetts, have expressed to me that they are not concerned about themselves, Mr. Chairman, genuinely.

They are concerned about their families, they are concerned about what happens to them after they are gone in terms of responsibilities to kids and education and mortgages and health care and so forth.

I think in keeping with the notions of Government gratitude toward those who serve and recognition of the reality of the linkage to the disease caused by that service, this bill is an appropriate and long-needed response and I commend it to the committee and I thank you again, Mr. Chairman, for your assistance and help and indulgence.

[The prepared statement of Senator Kerry appears on p. 254.]

Chairman CRANSTON. Thank you John, very much, for that very helpful and constructive testimony.

I want to thank you for all the hard work your staff has done with the committee staff, and for the conviction and flexibility that we managed to exercise in getting to the point where we are now and I thank you for your leadership.

Senator KERRY. Thank you.

Chairman CRANSTON. Dick, we now turn to you.

STATEMENT OF RICHARD S. CHRISTIAN, DEPUTY DIRECTOR, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION, ACCOMPANIED BY JAMES B. HUBBARD, DIRECTOR, NATIONAL ECONOMIC COMMISSION

Mr. CHRISTIAN. Mr. Chairman, The American Legion appreciates this opportunity to offer comments on the issues of Agent Orange, Home Loan Guaranty Program and VA Security Service.

We will address the Agent Orange legislation that has been scheduled for today in our summary statement. The full text of our testimony has been submitted for the record.

Jim Hubbard will be happy to answer questions regarding the home loan program.

Mr. Chairman, it is frustrating for those of us who represent Vietnam veterans to try to explain to them why it has taken so long to determine the long-term health effects of exposure to Agent Orange and to compensate those who are suffering chronic disabilities which they feel are caused by such exposure.

The American Legion holds fast to the position that it is a responsibility of the U.S. Government to use every resource available to determine the consequences of exposure to Agent Orange on those veterans who served in Vietnam, and then to adequately compensate those who are suffering from diseases and disabilities as a result of that exposure.

The American Legion supports the establishment of the presumption of service connection for non-Hodgkins lymphoma and soft tissue sarcoma. However, we question the inclusion of the sunset date of April 15, 1992. We feel that there is adequate scientific evidence on which to base such a permanent presumption without any restrictions or limitations.

Section 3 is a definite improvement in the presumption of service connection for chloracne. We fully support an amendment removing the previous restriction.

With regard to section 4, The American Legion has a resolution to take any and all steps necessary to ensure the congressional mandate for an Agent Orange study set forth in Public Law 96–151.

The American Legion became impatient with the foot-dragging on this important issue, and in 1983 undertook sponsorship and support of a study investigating the health and well-being of a random sample of Vietnam veterans.

The results demonstrated that herbicide combat exposures were highly correlated. Overall, men who served in Southeast Asia reported a higher incidence of heart disease, benign fatty tumors, skin rashes with blisters, change in skin color and increased sensitivity to light.

Mr. Chairman, The American Legion stands behind this study. The congressional findings as proposed to review and evaluate the available literature should be directed to new studies as well as The American Legion study.

With regard to contracting with scientific organizations, provision should be made for representation by veterans service organizations during the review process.

The American Legion is working closely to ensure that development of new regulations required as a result of the legal action to provide for the listing of all diseases having a positive association with the biological effects of exposure to herbicide agents.

Vietnam veterans should not be subjected to a higher level of proof than other people who have been exposed to toxic chemicals. There have been a number of literature reviews over the past 10 years. To embark on yet another full literature review will not provide answers unless it is derived from new studies.

Use of the Agent Orange register can provide the Secretary with updated information on veterans' health status. The value of these data should not be underestimated, and may provide the basis for adding new diseases to the list in VA regulations for service-connected compensation.

A tissue bank is an admirable concept, but should not even remotely be linked to this legislative measure dealing with presumptions. We believe that an organization such as the National Institute of Health, Division of Grants, would be an appropriate place to have such feasibility studies conducted.

These veterans must have an impartial scientific assessment of their health. Oversight by agencies such as OTA and CDC should be avoided in our judgment based on our experience with The American Legion study. We do not support a measure that would allow the HHS to define science such as standards for positive association, or scientific methods in light of past experiences, and with that Department's knowledge of the use of herbicides in Vietnam.

However, we do not oppose the proposed reporting on the identity and treatments of absorption of dioxin.

Regarding extending section 10 of the code until December 31, 1993, to provide for eligibility for VA health care for Vietnam veterans based on exposure to Agent Orange, we feel it is wrong to place a delimiting date on the provision of treatment to veterans exposed to Agent Orange. The availability of treatment should be made permanent.

Mr. Chairman, this concludes our summary.

[The prepared statement of Mr. Christian appears on p. 259.]

Chairman CRANSTON. Thank you very much. Let me get to just one question. Because of the time problems and the meeting I have to go to shortly on the medical funding, I want to move swiftly.

Although the loan fees would increase slightly under both S. 1158 and H.R. 1415, they would not be anywhere near the level necessary to support the entire program by themselves. Government contributions and presumably some income from investment of surplus funds would make up the difference.

On page 6 of the PVA written testimony, John, you state that "we believe your bill would keep the concept of a benefit program intact." Could each of the others of you comment, or anybody who feels compelled to, on whether S. 1158 and H.R. 1415 would preserve the entitlement nature of the VA guaranty loan program?

Mr. **Hubbard**. Mr. Chairman, thank you. The American Legion, for a long time, has been opposed to the 1 percent user fee that is currently charged to a veteran who wants to participate in the home loan program. We recognize, however, that the solvency of the program is at issue, and that if the fee goes up to 1.25 percent with the Government providing another 0.75 percent over a period of time, that that will help with the solvency problem.

In addition, since there must be a fee, it seems to us that veterans should have something to show for that fee other than just the ability to just participate in the program. Both bills provide an indemnity provision, and to us that seems to be a fair way of preserving a benefit and yet charging a fee and at the same time providing something for that fee.

Chairman **Cranston**. Do either of you have any contrary views or can we assume there is agreement on this point?

We will assume agreement. OK. Dick Christian, I have one brief question for you, which is based on your prior position with DOD rather than with your current role with the Legion.

As you know, when CDC conducted the Agent Orange validation study based on blood serum analysis, it divided the veterans studied into three cohorts based on likelihood of exposure to Agent Orange. What role did the Joint Service Environmental Group have in supplying information upon which that division into cohorts was based and what degree of confidence do you have that the division was appropriate, based on all the information DOD had about troop location and data about where Agent Orange was sprayed?

Mr. **Christian**. Mr. Chairman, let me answer the last question first. I have absolutely no degree of confidence in the results. The Environmental Support Group was assigned the mission of examining the military records, and they had tracked 50 combat battalions up until the point where the decision was made to do the blood plasma study.

The Centers for Disease Control selected the battalions that they felt had the highest exposure. Those units were passed to the Environmental Support Group to complete the tracking for a full 2 year period.

We relied solely on the Centers for Disease Control to inform us that those battalions had the highest number of exposures. The data that was provided by DOD was sent down there in coded sheets, computerized and automated in Atlanta.

We have no idea other than their word, that those battalions were the highest battalions to examine. Following the completion of the tracking of those battalions for 2 years, we then selected the individuals from those companies.

The entire decision of taking blood from those individuals rested on the decision that those battalions were the seven highest battalions for exposure purposes, and that is questionable.

It is questionable because we now know that the Centers for Disease Control did not even examine, after they were furnished the information on the 50 battalions, all of the data that was sent down there.

Chairman **Cranston**. Thank you very much. We will have some written questions for you. I thank you very much for your presence and your help to us. If you can get responses in to us by June 30 on the written questions, I would appreciate it.

Chairman **Cranston**. An opening statement by Senator Matsunaga will appear in the record as if read.

[The prepared statement of Senator Matsunaga appears on p. 149.]

Chairman **Cranston**. I would now like to ask the next panel of VA Chiefs of Security to please come forward—Chief Brian Hawkins of the West Los Angeles VAMC, Chief John Taylor of the Dallas VAMC, and Chief Frank Watts of the Kansas City VAMC.

Welcome and thanks to each of you for your willingness to come forward and testify today. I also want to say how grateful I am for your leadership and the valuable work you perform to make the VA medical centers safe for patients and staff.

I will be placing each of you under oath. I want to explain why. VA staff members who have appeared before our committee are a talented, highly professional, honorable group of individuals. Administering the oath is in no way intended to impugn any witness's integrity.

Last year it became clear that VA health facilities were facing a dire financial crisis to provide any form of protection.

In order for us to get firsthand candid impressions of the situation, and to protect the VA field witnesses, I decided to require all field witnesses at oversight hearings to testify under oath.

I will continue that requirement today on this important issue of security at VA medical centers. If you will stand up, I will administer the oath to you.

[Whereupon, the witnesses were sworn.]

Chairman **Cranston**. I know you are not making opening statements. I have quite a few questions I would like to ask, and they are for each of you. We will take turns as to who goes first for each question.

First, how long has each of you been a VA police officer, and at what medical centers have you each served in that capacity? Chief Hawkins, if you would start?

TESTIMONY OF BRIAN HAWKINS, CHIEF OF SECURITY SERVICE, VA MEDICAL CENTER, WEST LOS ANGELES, CA

Mr. **Hawkins**. Yes, sir. I have been a VA police officer for 17 years. I have served in the capacity of Chief of Security Service at the medical centers of Livermore, CA, Portland, OR, and now at West Los Angeles, CA.

Chairman **Cranston**. Chief Taylor?

TESTIMONY OF JOHN TAYLOR, CHIEF OF SECURITY SERVICE, VA MEDICAL CENTER, DALLAS, TX

Mr. **Taylor**. I have been a VA police officer for going on 7 years. I have served as an officer, shift supervisor, and now the Chief at the Dallas, TX, VA Medical Center.

Chairman **Cranston**. Chief Watts?

TESTIMONY OF FRANK WATTS, CHIEF OF SECURITY SERVICE, VA MEDICAL CENTER, KANSAS CITY, MO

Mr. WATTS. I have been a VA police officer since May of 1985. I was a shift supervisor at Dallas, a shift supervisor at San Francisco, and I am the Chief at Kansas City now.

Chairman CRANSTON. How long have each of you been a VA Chief of Security Service?

Mr. HAWKINS. I have been a Chief of Security Service for just about 8 years.

Chairman CRANSTON. Chief Taylor?

Mr. TAYLOR. Just about 3 years.

Chairman CRANSTON. Chief Watts?

Mr. WATTS. Eight months.

Chairman CRANSTON. How many police officers, FTEE, do each of you have, and is that adequate to do the job you are assigned? Brian, do you want to start?

Mr. HAWKINS. I have 52 assigned FTEE. That is not my on-duty head count, and I do not believe that it is adequate to do the job.

Chairman CRANSTON. What is your on-duty head count?

Mr. HAWKINS. My on-duty head count, I believe, is 34.

Chairman CRANSTON. You have 18 vacancies?

Mr. HAWKINS. Yes, sir.

Chairman CRANSTON. Why so many?

Mr. HAWKINS. Basically, I believe it is due to a recruitment problem. The vacancies are there to be filled, however, we have had great difficulty in filling them. I have been newly appointed to the West Los Angeles Medical Center as of the first part of February, and since my arrival, we have brought on, as of June 6, only four officers as a result of our recruitment efforts.

Mr. TAYLOR. We have 18 police officers at the Dallas VA Medical Center. All positions are filled right now, and I do not believe that is enough police officers to do the job.

Mr. WATTS. In Kansas City, we now have 14 officers. I don't believe that is enough to do the job.

Chairman CRANSTON. How many do you need, Frank?

Mr. WATTS. We need four or five more.

Chairman CRANSTON. How about you, John?

Mr. TAYLOR. I have planned for a minimum of four additional officers, but I probably could use even more than four.

Chairman CRANSTON. Do either of you, Frank or John, have vacancies at the moment?

Mr. TAYLOR. I do not.

Mr. WATTS. I have none.

Chairman CRANSTON. Brian, how many more officers do you need, do you think?

Mr. HAWKINS. That is a difficult question to answer, Senator. However, I believe the consensus of our evaluation was approximately 62. I am so new at the medical center, I am still trying to assimilate all the priorities and values that I feel I must answer in this fashion.

Chairman CRANSTON. How difficult is it to fill vacant police officer positions?

Mr. **Hawkins**. In Los Angeles, it is very difficult. Some of the dynamics involved deal with cost of living in that geographic location. We are suffering a lag time of 3½ to 4 months after an identified candidate for employment, after we have committed a position, and the lag usually is a result of the vouchering process.

Chairman **Cranston**. Was it easier at Livermore and Portland?

Mr. **Hawkins**. I don't believe it was easier. I believe that the turnover was not as great.

Chairman **Cranston**. Did you have enough officers in those two places?

Mr. **Hawkins**. Yes, I believe we did.

Chairman **Cranston**. John, how much trouble do you have getting officers?

Mr. **Taylor**. The recruitment process is long and difficult in order to get a qualified applicant to fill a position. It would be fairly simple just to fill a position with a body, but that's not the way I run a business.

It takes a long time to get rid of applicants that do not meet my criteria for being a police officer at the Dallas VA Medical Center. So it takes a while before I can get a good candidate to fill an empty position.

Once I have identified somebody that I feel is appropriate for my position, I probably have at least a 60-day lag time between when they are selected and when they report for duty.

Chairman **Cranston**. Frank?

Mr. **Watts**. It's the same in Kansas City. There is about a 60-day lag time.

Chairman **Cranston**. Let me start with you now, Frank, and then go across the table. Is staff turnover a problem at your center?

Mr. **Watts**. In Kansas City it is not, but in San Francisco it is, and in Dallas it was to a certain extent.

Chairman **Cranston**. What percentage of your officers leave each year where you are now?

Mr. **Watts**. In Kansas City the turnover rate has not been great at all. I've got men working there that have been there 12, 13, or 14 years.

Chairman **Cranston**. Brian, how about in your home town?

Mr. **Hawkins**. Senator, our turnover rate is 34 percent in the past year, and I would like to correct my testimony with regard to our present on-duty head count. It is 39, not 34.

Chairman **Cranston**. Is turnover then a considerable problem? It sounds like it is.

Mr. **Hawkins**. It is a very frustrating problem.

Chairman **Cranston**. John?

Mr. **Taylor**. Turnover rate used to be a big headache of mine. The annual turnover rate at the Dallas facility used to push 50 percent a year. Within the last couple of years, it has dropped down to about 16 percent a year.

Chairman **Cranston**. What caused the drop?

Mr. **Taylor**. The selection and hiring of more qualified, stable, and suitable applicants to fill the positions.

Chairman CRANSTON. Frank, have you had problems in getting the support you need from the medical center director in order for you to carry out your duties effectively?

Mr. WATTS. I have been lucky. The three medical centers that I have worked at, the directors and associate directors have all been great. I could not ask for a better situation than I have in Kansas City right now.

Chairman CRANSTON. Is it your impression that that is the situation generally throughout the system?

Mr. WATTS. No, sir, it is not.

Chairman CRANSTON. It is not?

Mr. WATTS. No, I think I have been lucky.

Chairman CRANSTON. Brian, how about you?

Mr. HAWKINS. I have been very fortunate, also. I have received superb support from my top management.

Chairman CRANSTON. What is your impression of the situation throughout the system?

Mr. HAWKINS. I really am not qualified to speak about other facilities.

Chairman CRANSTON. John?

Mr. TAYLOR. Again, like the two other chiefs, I feel that the Dallas facility gives me all the support I need, but I will agree with Chief Watts that the general consensus is that there could be some problems as far as support in the field.

Chairman CRANSTON. My predisposition at this point is that organizationally, placing the security service at VA Central Office directly under the Secretary, as I indicated earlier, while not altering the direct line of accountability of chiefs to the medical center director, well might give security matters more resources and greater visibility.

Do you think that moving security services directly under the Secretary would affect your operations favorably? If so, how, and if not, why not? Frank?

Mr. WATTS. Well, the situation I am in right now, I couldn't ask for anything better, but anything that can help the Central Office staff become more visible, hire more staff and get more funding, I'm all for it.

Chairman CRANSTON. Brian?

Mr. HAWKINS. Senator, I also am all for security service being able to move in the affirmative. However, I don't really understand all the dynamics that may be involved with moving us under the Secretary. I know that it is very important, and I believe the language of the bill speaks about immediate supervision remaining with the medical center director.

Chairman CRANSTON. Yes. John?

Mr. TAYLOR. I agree with the chiefs. I also think that moving responsibility to the Secretary would be a good move for the VA police.

Chairman CRANSTON. Frank, in your personal professional view, how adequate is the police officer training received at the VA police officer training school in Little Rock?

Mr. WATTS. I think the VA school in Little Rock is little more than a refresher course. I attended that class in July of 1985. At that time it was only 40 hours. It was just a brush-up course in criminal law, Federal law, and so forth.

Some of the applicants that we hire, especially the ones right out of college, with no job experience, they don't know how to handcuff anybody, they don't know how to do anything pertaining to law enforcement. That school in Little Rock is just not adequate to cover that.

Chairman CRANSTON. Do you think it is much too superficial and much too short?

Mr. WATTS. I think it is, yes.

Chairman CRANSTON. Brian?

Mr. HAWKINS. I would have to agree. I believe that we could improve in that area in Little Rock.

Chairman CRANSTON. John?

Mr. TAYLOR. I again agree. I think the Little Rock academy is much too short, the subjects are given too much of a cursory review, it is more or less a paperwork exercise, and the 8 days that the academy encompasses just is not enough time to train an officer to do a good job.

Chairman CRANSTON. Frank, again, in your personal professional view, in what areas should new or additional training be provided?

Mr. WATTS. Day to day contact with veterans is not addressed that much in the school and I think that is very important to those persons. The officer in uniform is always the first one that the veteran contacts when he comes into a VA if he has a question to ask.

Different aspects of law enforcement—handcuffing, making arrests, search and seizure and all that—these all can't be covered in 8 days.

Chairman CRANSTON. What should be the approximate duration of such training?

Mr. WATTS. I think, at the minimum, an 8-week course. At least 8 weeks.

Chairman CRANSTON. Brian, would you give your personal professional view of the areas where there ought to be additional training and how much time?

Mr. HAWKINS. I feel quite strongly that we ought to be offering a preceptorship for security chiefs in the Veterans' Administration. That is one area I feel that training should be emphasized. Second, I also feel that the——

Chairman CRANSTON. Tony Principi agreed he would institute that program this morning.

Mr. HAWKINS. I also feel the curriculum that is currently being taught at the academy could be expanded upon. I agree with Chief Watts that there should be an expanded academy at Little Rock. However, I don't know in my own mind how long that academy should be.

Chairman CRANSTON. John?

Mr. TAYLOR. I agree, too, that the academy needs to be longer. I would estimate there should be a minimum of 8 weeks. I would imagine the officers need extensive hands on training as Frank said, in order to learn how to arrest somebody, how to place them in handcuffs, how to subdue a situation. There needs to be more information given to them in case law, new trends, new moves in criminal justice that were not provided on an annual basis. We are not given some of these trends that regular law enforcement personnel are getting.

I also agree, as was discussed this morning, that the chiefs need to have some additional training. The detectives need to be brought in for annual refresher training. Now, I know they just did that recently. My detective went for a week of refresher training in Little Rock.

At this point, I would like to say that I don't think Little Rock, AR is the ideal location for the training of a VA police officer. My personal opinion is that all VA police officers need to be trained at the Glencoe, GA Federal Law Enforcement Training Center, where they have personnel and facilities to adequately train police personnel. Each different Federal agency has their own program set up at Glencoe. The Veterans' Administration could do the same.

Chairman CRANSTON. Frank, is your center considered to be in a high crime area, using FBI crime index data?

Mr. WATTS. Yes, sir. The crime index in Kansas City is 12.

Chairman CRANSTON. How about yours, Brian?

Mr. HAWKINS. Yes, it is. It is in a high crime area.

Chairman CRANSTON. How about yours, John?

Mr. TAYLOR. Yes, sir.

Chairman CRANSTON. What are the indexes in each case?

Mr. HAWKINS. I'm not quite certain for Los Angeles.

Mr. TAYLOR. I was provided a printout from my detective who just came back from Little Rock that said that the Dallas facility was 16.4.

Chairman CRANSTON. And what was yours, Frank?

Mr. WATTS. It was 12.

Chairman CRANSTON. Are your police officers authorized to wear protective vests or carry and use nightsticks or both?

Mr. WATTS. In Kansas City the officers are authorized to have a nightstick in the car outside. They are not authorized to wear them inside. We are in the process right now of buying body armor for all the officers.

Chairman CRANSTON. Brian?

Mr. HAWKINS. Senator Cranston, in Los Angeles they all carry nightsticks and they are all required to wear body armor.

Mr. TAYLOR. In Dallas, all the officers wear the body armor and we do not have nightsticks.

Chairman CRANSTON. Is that issued to them by you in each case?

Mr. TAYLOR. Yes, sir.

Mr. HAWKINS. Yes, sir.

Mr. WATTS. Yes, sir.

Chairman CRANSTON. Let me start with you, John, and go the other way across the table for a while.

Does your medical center have a metal detector?

Mr. TAYLOR. No, sir.

Chairman CRANSTON. Does it need one?

Mr. TAYLOR. I would imagine we could use a metal detector, but I don't have the manpower resources to adequately man one.

Chairman CRANSTON. Brian?

Mr. HAWKINS. Yes, we do have metal detectors in Los Angeles.

Chairman CRANSTON. Frank?

Mr. WATTS. No, sir, we don't have metal detectors in our facility.

Chairman CRANSTON. Do you need one?

Mr. WATTS. With our crime rate, in that neighborhood, we could use one, but logistically, it would be awfully hard to implement.

Chairman CRANSTON. Let me ask you this now, and I will start with you John.

Would it be feasible to establish a two-tiered security force under which officers performing their duties on the grounds outside VA patient treatment buildings would be armed, for example, with firearms or stun guns, while other officers, who perform inside patient care areas, not including those operating metal detectors, would be armed only with mace?

Mr. TAYLOR. Yes, sir. I think that would be feasible.

Chairman CRANSTON. Do you think it's desirable?

Mr. TAYLOR. Sir, I think it's a step in the right direction. It's a very complex and difficult question to answer. I have spent many hours thinking about it myself and discussing it with my peers and although I think that is a step in the right direction it may not be the ultimate solution at this point.

Chairman CRANSTON. What do you think Brian?

Mr. HAWKINS. I think it is feasible. My answer to your question about whether I thought it would be desirable to have the two-tiered system would be no.

Chairman CRANSTON. You think it would not be desirable?

Mr. HAWKINS. I would like to be involved in exploring and raising my level of awareness with those who would object to carrying firearms. I think that the amount of vulnerability is not greater outside the buildings than it may be inside the building.

I also believe that it is a very difficult question to answer, and there are mixed views within the VA about carrying firearms.

Chairman CRANSTON. How do you feel about it, should they have firearms or not?

Mr. HAWKINS. I'll answer that question as though I were a police officer and we were talking about my personal safety. I believe that I would like to be able to protect myself in a life-threatening situation.

Chairman CRANSTON. Frank?

Mr. WATTS. I agree with Chief Hawkins. I think all the officers ought to be armed with firearms.

Chairman CRANSTON. How safe is it for a police officer to operate a metal detector without a protective vest or a nightstick, John?

Mr. TAYLOR. I wouldn't think it would be a very safe practice right now. I don't have any real experience in that area, but in my personal point of view I would say it wouldn't be safe, because if a person came through the metal detector and set it off, and it turned out that person was armed with a firearm, you would have no recourse. You wouldn't be able to protect yourself in case that individual decided to pull that firearm on you.

Chairman CRANSTON. Brian?

Mr. HAWKINS. I believe that the nightstick and the body armor would reduce the vulnerability. However, I don't believe that either are going to be such that they are going to cause the person who would be firing a weapon at you to cease.

Chairman CRANSTON. Frank?

Mr. WATTS. That's the same way I feel.

Chairman **Cranston**. That is what happened in the Bronx.

Mr. **Watts**. Yes, the gentleman in the Bronx was wearing body armor, and I think he had a nightstick and he still got shot and killed. They shot him all around the body armor.

Chairman **Cranston**. How safe is it for an officer to operate a metal detector by himself or herself alone?

Mr. **Taylor**. Again, I don't think that's a very safe practice. If we did have a metal detector in my facility, I would never have it manned with just one person. I would do anything I could to have it manned with a minimum of two officers.

Chairman **Cranston**. Brian?

Mr. **Hawkins**. It's very difficult, not just for safety purposes. With the volume of activity that we have in West Los Angeles, our second officer oftentimes is spending much of his time receipting for the weapons, whether they are illegal weapons, or whether they are going to be seized for safekeeping, prior to allowing the beneficiary to proceed to his clinic area.

Chairman **Cranston**. How many weapons do you pick up, let's say per week or month?

Mr. **Hawkins**. It varies. I would like to, in a humorous response, say that we usually weigh them, rather than count them, but I would guess between 20 and 50, 20 and 100. It is a normal occurrence for beneficiaries to present themselves for clinic visits to the medical center carrying weapons or knives.

Chairman **Cranston**. Is that figure per week or per month?

Mr. **Hawkins**. That figure is per week.

Chairman **Cranston**. How many are guns, and how many are knives?

Mr. **Hawkins**. Very few guns, and I don't have the statistics—most often they are knives or death stars, items that could be placed in your pocket.

Chairman **Cranston**. Is that just pocket knives or what kind of knives are we talking about?

Mr. **Hawkins**. Most of the knives that we pick up are pocket knives. However, there are sheath knives, and there are knives that I would describe as hunting knives, folding blade knives with a length of 4 or 5 inches or more within the handle, and then there are the simple pen knives, or pocket knives, smaller than 3 inches.

Chairman **Cranston**. Are there any serious altercations, frequently or infrequently, when you find these weapons?

Mr. **Hawkins**. Not often.

Chairman **Cranston**. Frank?

Mr. **Watts**. In Kansas City we accumulate approximately 30 or 40 knives a month. Knives, nunchuks, a slapjack every once in a while, death stars, like Mr. Hawkins said, and brass knuckles once in a while.

Chairman **Cranston**. How do you detect them, if you don't have a metal detector?

Mr. **Watts**. A lot of them are detected through the person being stopped and questioned. A lot of them are detected on the wards, and a lot of them are detected in the emergency room.

Chairman **Cranston**. In most cases, is it just people innocently carrying around pocket knives, as they do all the time?

Mr. **Watts**. Ninety percent of the time, it is, yes, sir.

Chairman CRANSTON. Most of the time?

Mr. WATTS. Yes.

Chairman CRANSTON. Have there been cases in any of your centers where these knives have been used, or has there seemingly been an attempt to use them if they got inside with them?

Mr. TAYLOR. We have had incidents at the Dallas VA where knives have been pulled on individuals. When Frank Watts was a shift supervisor at the Dallas VA, himself, and two officers became involved in a situation where a man was armed with a 9-millimeter Intertech semi-automatic submachine gun, which they took off the individual, along with a 0.38 snub-nose revolver.

The Dallas VA is located in a high crime, low income neighborhood, and it is also surrounded by subsidized housing units, which predisposes a lot of the individuals that are entering the VA to be armed for their own protection. A knife or some sort of item like that is just a normal part of what people wear around that particular VA.

Chairman CRANSTON. Was there any big problem when you took away the machine gun?

Mr. TAYLOR. There was a pretty big scuffle.

Mr. WATTS. We had a scuffle outside, and we took the machine gun away from him, and he reached for the 0.38 in his belt. We got that away from him, thankfully.

Chairman CRANSTON. What protection were those officers equipped with?

Mr. WATTS. We both had body armor on, and a can of mace.

Chairman CRANSTON. How, in each of your opinions, should officers who operate metal detectors be protected or armed, and do you believe stun guns to be effective in these situations? John?

Mr. TAYLOR. That's another difficult question. I would venture to say that the officers who are manning metal detectors need to have a minimum of some type of protective body armor, preferably with the highest threat level protection.

They would also need to be, I feel, armed with firearms of some type, because there is a good possibility they would be coming into contact with firearms of some type.

On the use of stun guns, I have mixed emotions about that, before you can use a stun gun on somebody, you have to be standing right next to them. In the case of a man being armed with a firearm, I don't want to be standing next to them when I don't have a firearm.

And, as far as the incapacitating mace, you have to be so close to that person, it's foolhardy to be using a can of mace against somebody with a firearm.

Chairman CRANSTON. At a minimum, you think they should have full body armor and nightsticks?

Mr. TAYLOR. At a minimum, I would say they have to have full body armor. I don't know, again I will go back to my previous argument about the nightstick—in order for the nightstick to be useful against somebody, you have to be right there next to him. If the man has a firearm, you are going to lose.

Chairman CRANSTON. In your view, if you are trying to take away firearms, you should have a firearm?

Mr. **Taylor**. You should at least have availability to one, yes, sir, because the incident may prove to be——

Chairman **Cranston**. What do you mean by availability?

Mr. **Taylor**. You should have a firearm on you.

Chairman **Cranston**. Brian?

Mr. **Hawkins**. Would you repeat the question?

Chairman **Cranston**. Should officers who operate metal detectors be protected or armed and what do you think about stun guns?

Mr. **Hawkins**. I'm not well informed about stun guns, at all. From what I have read, I believe that there are mixed reviews on their effectiveness, specifically based on the person's condition, whether there may be a chemical introduced, the type of clothing one is wearing, and so forth.

My response to body armor is that I certainly believe it would lessen that officer's vulnerability to have body armor on when he was working the metal detector.

Mr. **Watts**. I think a man working a metal detector should be armed with a firearm and wear body armor.

Chairman **Cranston**. What do you think about stun guns?

Mr. **Watts**. I don't think much of them.

Chairman **Cranston**. You don't?

Mr. **Watts**. No, sir.

Chairman **Cranston**. I understand that there are at least three VA medical centers, Manhattan, San Juan, and Miami, all in high crime areas, where officers operating stationary metal detectors have neither protective body armor nor nightsticks.

Do you share my concern about the safety of these police officers at those centers if they have to try and disarm somebody without having any effective means to protect themselves? John?

Mr. **Taylor**. Yes, sir, I share your concern and I am deeply concerned for those individuals manning those posts.

Chairman **Cranston**. Brian?

Mr. **Hawkins**. Yes, sir, I do.

Chairman **Cranston**. Frank?

Mr. **Watts**. Yes, sir, I do.

Chairman **Cranston**. What do you think about the point that was made earlier as to whether or not officers should be required to wear vests? It was stated that they are heavy and unpleasant and people don't want to wear them, at least some people don't. What is your response to that?

Mr. **Taylor**. At the Dallas VA, the officers are required to wear the vests. There is no discussion made about not wanting to or wanting to, they have to wear the vests.

Chairman **Cranston**. Do you think that's the way it ought to be?

Mr. **Taylor**. Yes, sir. I don't think it is an area where an officer gets an option. In Dallas it gets hot. In the summer it will be 110 degrees and the officers will suffer with the vests on when they are outside, but I think I would rather suffer with the heat as opposed to getting shot.

We will take personnel action against an officer who does not comply with the standing order to wear a full and complete vest. They face disciplinary action.

Chairman **Cranston**. Brian?

Mr. **Hawkins**. We require the vests to be worn, sir.

Chairman **Cranston**. They do wear them?

Mr. **Hawkins**. Yes, sir.

Chairman **Cranston**. Frank?

Mr. **Watts**. I can vouch for what John Taylor said, because I worked in Dallas and wore them for a year, every day. They will be worn in Kansas City.

Chairman **Cranston**. They should be required?

Mr. **Watts**. They have no choice. They will wear them.

Chairman **Cranston**. At your medical center, John, what part of a police officer's time is spent performing various crime prevention or security related duties, as opposed to simply providing assistance to patients, employees and visitors?

Mr. **Taylor**. I would imagine, that in the part of town we are located in, that at least a good 70 percent of their time would be linked to law enforcement related activities, whereas about 30 percent of their time would be linked to patient assistance and nonlaw enforcement duties.

Chairman **Cranston**. Brian?

Mr. **Hawkins**. Senator Cranston, I wasn't really prepared for that question. However, I certainly expect my staff to be a visual deterrent when they are on duty. For the most part, we expect them to be on patrol providing that type of capability for the medical center.

I am certain that if I had to guess a percentage, I would say 20 or 30 percent of the time we probably are providing services that are not directly attributed to law enforcement.

Chairman **Cranston**. Frank?

Mr. **Watts**. The Kansas City VA center is located in the same type neighborhood that Dallas is. I think we have about 70 percent there, too, and about 30 percent of other kinds of assistance.

Chairman **Cranston**. Regarding the vests, have there been instances you are familiar with where wearing the vests has given protection? Where they were fired at and the bullets were deflected by the vest?

Mr. **Taylor**. Since we have worn the vests, nobody has been shot. Let me correct that—since we have had the vests, nobody has been shot at and hit.

We have had officers shot at, I just had one shot at in early May of this year. He was breaking up an auto theft in progress, and was shot at four times. Luckily, the slugs did not hit him. One of them hit one of our vehicles, but nobody has been "saved" by wearing the vests, as of yet.

Chairman **Cranston**. Brian?

Mr. **Hawkins**. To my knowledge, no.

Mr. **Watts**. To my knowledge, no.

Chairman **Cranston**. You were present when the VA Deputy Secretary pledged that he would see to it that there were no reprisals or negative repercussions to any of you in connection with your testimony this morning.

I don't see any reason why there would be any, and there certainly should not be, but please let us know immediately if anything develops to give you any concerns on that point in the future. We will do our best to see that no such thing happens. Obviously, it should not, and I see no reason for it to happen.

Do any of you have anything else to add this morning? Anything else on the security matter?

Mr. HAWKINS. No, sir, I do not.

Chairman CRANSTON. I know you heard our exchange with Deputy Secretary Principi earlier. I was encouraged by his approach. I hope you were as well. I thank you very much for your testimony this morning, and for your very responsive, precise responses to my questions.

We will probably have some written questions to submit for the record. You have all been very helpful and courageous. It is certainly my impression that all three of you are very highly qualified and doing very fine work, and I thank you for that very, very much. Thank you.

Now I want to call the last panel to the table. We will take a brief recess while they are on their way to the table.

[Recess]

Chairman CRANSTON. Mr. Angelo Mozilo, President of the Countrywide Funding Corp. of Pasadena, CA, I appreciate your coming all the way across the country from the Great State to be with us today representing the Mortgage Bankers Association. You are accompanied by two officials today, Burton Wood and Linda Bumbalo, and by Jim Irvine of the National Association of Home Builders.

I wish that you would lead off, Angelo, and please let me remind you all of the 5 minute procedure.

STATEMENT OF ANGELO R. MOZILO, PRESIDENT AND CHIEF EXECUTIVE OFFICER, COUNTRYWIDE FUNDING CORP., PASADENA, CA, ACCOMPANIED BY BURTON C. WOOD, LEGISLATIVE COUNSEL, MORTGAGE BANKERS ASSOCIATION OF AMERICA; AND LINDA K. BUMBALO, ASSOCIATE LEGISLATIVE COUNSEL

Mr. MOZILO. Thank you, Mr. Chairman and members of the committee. MBA appreciates this opportunity to testify this morning on S. 1158 and on H.R. 1415.

Before addressing these proposals, we want to express our gratitude for the committee's help in implementing the no-bid formula changes and other program improvements passed by Congress in 1987.

Mr. Chairman, MBA strongly opposes the VA's proposal to include the Government's cost of borrowing funds in a no-bid formula. The definition of net value should clearly exclude the cost of Government borrowing. The formula should be temporarily extended as proposed in S. 1158 and H.R. 1415 through September 30, 1991.

The VA has proposed regulations effective August 1 that would increase by 40 percent the number of cases in which lenders could not convey a foreclosed property to the VA. The value of the property would be reduced by the estimated Government's cost of borrowing the funds used by the VA if it purchased and disposed of the property.

When enacted by Congress, the no-bid formula established statutory criteria to determine when lenders may convey foreclosed property to the VA. That statute defines the term net value. The

VA is attempting to incorporate the cost of borrowing into the no-bid formula.

They are attempting to accomplish this by including in the regulation the cost to the Government rather than to the VA as permitted by the statute. The VA cannot, by the exercise of its rulemaking authority, revise the definition of net value embodied in statutory language.

The proposal in S. 1158 would compare the cost of funds for the VA to acquire the property or pay the guaranty and not acquire the property. Half of the difference between these two amounts would be used in the no-bid formula to reduce the value of the property.

MBA strongly opposes this proposal. The proposal assumes that the Government would borrow the funds whether it pays the guaranty or takes the property. It is unfair to assume that the Government would borrow every dollar that it spends for the VA Home Loan Program. The Federal budget does not make the assumption that every dollar that is spent is borrowed.

S. 1158 places the no-bid formula on an inequitable basis with all other Federal spending programs. The cost of funds proposal to increase lenders losses is another burden that jeopardizes the entire VA Home Loan Program.

Lenders' share of property losses has increased from 3 percent in 1984 to 20 percent in 1988, costing lenders hundreds of millions of dollars. In fiscal year 1988 alone, lenders lost over $200 million on VA no-bids. The VA estimates the cost of funds proposal would shift an additional $20 million to the lenders in fiscal year 1989 and $150 million more in fiscal year 1990.

Almost 70 percent of the lenders polled by the MBA have said that they would limit their participation in the VA Home Loan Program if these regulations take effect. In the first quarter of fiscal year 1989, VA financing is down to 4 percent of the mortgage market.

This represents a 33 percent drop in VA market share over the last 5 years. This is particularly significant when FHA's market share has risen about one-third over the same time period.

GNMA has stated in a recent letter to the VA that its losses due to no-bids have increased to the point where they are the number one threat to the viability of the concept of a Government guaranteed mortgage-backed security program. MBA strongly urges Congress, as is provided for in H.R. 1415, to prohibit the action proposed by the VA.

There are a few other provisions of S. 1158 on which we would like to comment. First, while the sliding scale funding fee preserves the VA no-payment benefits, that provision may result in discrimination against no downpayment loans, loans made to the veterans who most need their VA entitlement.

Second, MBA applauds the committee's recognition of the inadequacy of the guaranty in high cost areas, but the veteran should not pay for this additional entitlement.

Third, we oppose the provision contained in S. 1158 permitting the administration to raise the funding fee based on economic projections.

Finally, MBA believes the partial payment notification provision is already covered by VA regulations which provide extensive protection to veterans.

Mr. Chairman, I have been making VA loans for over 35 years, having personally interviewed thousands of veterans. I have seen how important the VA program is in providing homeownership for veterans.

I have seen how this program has improved the lives of veterans as well as their families. The important benefit is being diminished by chipping away at the elements of the program.

Congress has the opportunity and the responsibility to stop the diminution of this essential program. MBA appreciates the opportunity to testify before you today, and we are happy to answer any questions you might have.

[The prepared statement of Mr. Mozilo appears on p. 282.]

Chairman Cranston. Thank you very much.

Mr. Irvine?

STATEMENT OF JIM IRVINE, CHAIRMAN, FEDERAL GOVERNMENT AFFAIRS COMMITTEE, NATIONAL ASSOCIATION OF HOME BUILDERS

Mr. Irvine. Thank you very much, Mr. Chairman. My name is Jim Irvine. I am a builder from Portland, OR. I was born in San Diego, in the Balboa Hospital, so it is a pleasure to come and testify before you today, being from California.

I am testifying today on behalf of the 157,000 member firms of the National Association of Home Builders. I have been a VA builder since 1973 and currently am Chairman of NAHB's Federal Government Affairs Committee.

Today you have asked for our views on the Veterans' Home Loan Guaranty Restructuring and Solvency Act. The bill is similar to the recently passed House bill on mortgage indemnity, H.R. 1415.

It is our understanding that these bills are being considered because of the recent high losses in the loan guaranty revolving fund brought about by foreclosures and delinquencies in the home loan program over the past few years in our oil and agriculture producing states, as well as recent changes in administration policies.

Future appropriations, however, may not need to be as substantial as they have been in the past to sustain the fund, because the economy is turning around in several affected areas. As you may know, even down in Houston, TX, which was hardest hit, building permits have increased, 24 percent over the past year which is a strong indicator of future housing starts.

Before passing legislation to make permanent changes in the program to solve the revolving fund problem, the fundamental question of why the program was created and the constituency it serves must be carefully analyzed. While S. 1158 was introduced as a means to gain solvency in the VA Home Loan Program, NAHB is concerned that this legislation will not achieve its required objective of making the program actuarially sound.

While the program may have the appearance of working, there are many elements which must be examined before passing this legislation. The 2 percent indemnification fee, which includes a

1.25 percent veteran fee and a 0.75 percent Government fee, may be insufficient to cover losses in the program on new loans.

The indemnification fee may have to be higher to make the program sound. In all likelihood, some initial capital infusion or additional appropriation may be necessary as well. This was recognized in your bill where an increase in the fee of 20 percent is proposed if it is anticipated that there will be insolvency in the fund.

A recently released Peat Marwick study on mortgage insurance options for the VA program emphasized that the deficit balance is created under the concept of this legislation. The report states that it goes into a deficit balance by 1993, and does not emerge from that deficit until 2023. Furthermore, investment income provides little benefit under this program, since the fund's balance becomes negative after the first 4 years.

The increase in funding fee income generated by this program appears negated by the additional risk of foreclosure associated with the removal of liability from a veteran upon defaulting on a VA loan.

Instead of this approach, we suggest that the VA be asked to determine the level of Government contribution, which would be required to make the program work. We urge that there not be an increase in the veteran's contribution.

There is some caution, however, because the Government is making a contribution to the new fund created in this bill. An estimate of this amount would have to be appropriated each year by Congress. We are concerned that each estimate may not be enough to cover the Government's cost, and that it will, in effect, put an artificial ceiling on the program, which in fact occurred in fiscal year 1986 under the sequestration requirements of Gramm-Rudman.

If this should happen, many veterans would live a nightmare, as they would lose an opportunity for the American dream of homeownership. We are pleased, however, with the section of your bill which allows the veteran to purchase additional entitlement. This will be a big benefit to first-time home buying veterans and veterans who live in high house cost areas.

I would like to take this opportunity to comment on an adjustable rate mortgage for VA buyers. The VA arm is necessary to modernize the VA Home Loan Guaranty Program, and we urge that you include it in your legislative initiatives this year.

Mr. Chairman, while we are pleased that you have extended the no-bid formula for 2 years, we are disappointed that you are allowing a portion of the imputed interest charges to be used when calculating whether or not a property becomes a no-bid.

We urge you to adopt the House provision in H.R. 1415, which excludes any estimated imputed interest of funds to the Government. We are concerned that this action would significantly wound the VA lending delivery system.

In conclusion, the no downpayment VA program, we believe, is a critical part of this Nation's housing finance system. It has opened the door to homeownership for over 12.5 million veterans since the end of World War II, most of whom would have been unable to meet the tougher downpayment requirements on a conventional loan.

I might make a point—in my experience as a VA builder, the real critical issue is for the two-income families today. Although they may make a decent living, they cannot afford to come up with the downpayment to buy a new home. Rents are very high, and it is very difficult for them to accrue that money. So the VA program has been of great benefit to those veterans.

According to a study on the state of the Nation's housing released today by the Joint Center of Housing Studies of Harvard University, the inability to make a downpayment is the greatest obstacle confronting prospective first-time home buyers.

I urge that any action by the Veterans' Affairs Committee take into account the benefit nature of the VA Home Loan Guaranty Program. Legislative initiatives which may erode the 45 year benefit of the program should be carefully analyzed by Congress.

I thank you for this opportunity to be here today, and I will be glad to answer any questions.

[The prepared statement of Mr. Irvine appears on p. 298.]

Chairman CRANSTON. Thank you very much.

Angelo, turning first to you, in your prepared testimony, you cite an MBA survey indicating that many lenders would "limit their participation" if VA no-bids were to increase. Yet, a June 2, 1989 article in your association's publication, Real Estate Finance Today, said "Competitive forces have forced many lenders to remain active in the VA's Home Loan Guaranty Program."

Do you believe that these competitive forces will be insufficient in the future to prevent lenders from abandoning the VA program?

Mr. MOZILO. Yes. I think it goes beyond the competitive forces. I don't think that with the substantial losses that are being sustained in the foreclosure on these no-bids that mortgage companies can continue in the program, whether they choose to be competitive or not. They just economically cannot support the program, particularly in these depressed areas.

Chairman CRANSTON. You also state in your testimony that "any inclusion of the costs of funds in the no-bid formula would force lenders to take further strategic efforts to minimize VA home lending." What steps do you believe lenders would take to limit their participation in the VA program?

Mr. MOZILO. I think from my discussions with the senior executives of many companies is that they would withdraw from the program entirely. It is just much too risky.

Chairman CRANSTON. I would like to address this both to you, Angelo, and to you, Jim. Would more stringent underwriting standards be good, or bad for the VA program?

Mr. MOZILO. I heard the previous comment. I don't think that the issue is underwriting. If you look at the problem with this program it is focused on the economically depressed areas, where the basic underlying credits of these loans were fine when they were originated, they passed any reasonable underwriting standards.

In fact, even with downpayments, the VA would have received these properties back, because the reductions in value as a result of the economic catastrophes were so substantial that the buyers could no longer hold on. So I don't think it is an underwriting issue, I think the credit standards that are in place are time-tested, and are very good.

Chairman Cranston. What is your view, Jim?

Mr. Irvine. Similar to Mr. Mozilo's, I think that the real problem has been because of what happened to the economies of those areas where there were high foreclosures, accompanied by administration policies in the early 1980s which have caused the program to sell their vendee portfolio and the like. I don't think it is the underwriting criteria at all.

Chairman Cranston. Angelo, you suggest in your written testimony that VA be granted the option of releasing veterans from liability on a case-by-case basis. Since VA already has this option under current law, you are proposing no change on that issue, is that correct?

Mr. Mozilo. That is correct. I think that the retention of the liability on the part of the veteran is a lot more effective in reducing foreclosures than the downpayment proposal that has been made.

Chairman Cranston. Do you have any suggestions for criteria that VA should use for granting waivers on a case by case basis?

Mr. Mozilo. I think the underwriting standards that presently apply to the individual assuming the VA loan are adequate, if they can pass that underwriting test, then the original veteran should be released.

Chairman Cranston. What would be the actual cost to a lender of the requirement in S. 1158 and in H.R. 1415 to notify VA of the lender's refusal to accept a veteran's tender of partial payment?

Mr. Mozilo. I don't know if I could respond to that question that way as to what the cost would be. It would be extremely difficult in terms of tracking the reasons for partial payments.

There are many issues involved with the partial payment situation. Some are legal issues which infringe upon foreclosure rights of the lenders. I think, and our evaluation is, that this has not been a real issue. We are under restrictions and regulations to conduct ourselves in a certain manner relative to partial payments.

I think what is in place is adequate. I certainly don't think additional legislation is required in this area. It would be very cumbersome, and very confusing. I think it would lead to a great amount of paperwork, and would resolve in a problem that doesn't exist.

Chairman Cranston. Jim, on pages 6 through 7 of your testimony, you express concern about the provision in S. 1158 allowing the Secretary to make limited increases in the loan fee, stating that, "We urge that any increase in fee revenue be generated from additional contributions from the Government, and not the veteran."

Yet on that same page 7, you criticize the provision to reduce the fees where there are certain downpayments, because it might require Government appropriations. Do you wish to see the VA Loan Guaranty Program become totally self-supporting, or do you see it as a Government benefit program that will require appropriations from time to time?

Mr. Irvine. We clearly see it as the latter. We believe it is a benefit to individuals that served their country. We believe it was created as a benefit, and we believe those veterans deserve it.

I have built a lot of homes for first-time home buyers that have used the program. My experience has been that veterans who have used this program could not have otherwise bought a home, without the veteran's program. It is a benefit that they relied on. When they got out of the service, they knew when they were going to settle in an area and that they would be able then to really become part of that community.

These veterans, as we all know, are people who have already served, and they want to continue to give to their community. So we believe that it is an entitlement and should be treated that way.

Chairman CRANSTON. You seem to suggest that NAHB believes that the indemnity provisions in S. 1158 and H.R. 1415 do not go far enough because they only indemnify the individual against liability to VA for guaranty payments. Do you believe Congress should protect the veteran against liability to the lender and if so, by what means?

Mr. IRVINE. If I understand the question, Senator, it is my personal belief that the veteran ought to be liable for the loan. If he signs on the loan, he takes the responsibility for the loan. The builders around the country that I talk to believe the same way.

In terms of the indemnity, we have opposed the 1-percent user fee, when it was a 1-percent user fee. We don't like the 1.25-percent user fee, and we presume that if it went back to being an entitlement, there would be no user fee. That's our position.

Chairman CRANSTON. What evidence do you have that the cost-of-funds formula in S. 1158 would cause lenders to abandon the VA guaranty loan market?

Mr. IRVINE. We are not lenders. Home builders are not lenders, obviously. We work with mortgage bankers. When I call up my friendly mortgage bankers and they tell me that they may be out of the program because of what's going to be happening, I get concerned. So that's their decision, and they are going to be the ones who tell us, and call me up and say, yes, we have these loans available, or not.

If the delivery system is gone, we are not going to be able to make that loan easily for the veteran. It is the plethora of mortgage bankers that are out there today that make it very easy to put those loans in place.

Chairman CRANSTON. I will have some written questions for the record, but I have no more now.

I thank you all very much for being with us, and appreciate it a good deal. I want to thank all of our witnesses for their participation. This has been very helpful testimony. We thank the VA home loan staff from VBA and staff from the General Counsel's Office—Grady Horton, Keith Pedigo, Jim Kane and Henry Cohn for remaining with us throughout all this.

The committee will meet on July 13 to mark up S. 1153, the Agent Orange bill, as well as reconciliation legislation that I described earlier; our committee construction resolution and probably a bipartisan Court of Veterans Appeals bill that Sonny Montgomery and I will be introducing today or tomorrow, along with our respective ranking minority members, Frank Murkowski, and Bob Stump.

Then on July 20, we will meet to mark up all remaining health and benefits legislation, including S. 1158 and section 221 of S. 13.

I thank the staff for their fine work, Michael Cogan, Bob Baney, Erin McGrath, Darryl Kehrer, Mike Cuddy, Sharon Blackman, Charlotte Hughes, Claudia Kashin, Bill Brew, Ed Scott, and Jon Steinberg.

Let me add that the meeting has not yet been called on the medical funding, but I expect that to occur soon. I gather there is some discussion going on over the way to put it all together.

Thank you all very much.

[Whereupon, at 11:27 a.m., the committee was adjourned, to reconvene on Thursday, July 13, 1989.]

APPENDIX

II

101st CONGRESS
1st Session

S. 13

To amend title 38, United States Code, to increase the rates of disability compensation and dependency and indemnity compensation for veterans and survivors, to increase the allowances paid to disabled veterans pursuing rehabilitation programs and to the dependents and survivors of certain disabled veterans pursuing programs of education, and to improve various programs of benefits and health-care services for veterans; and for other purposes.

IN THE SENATE OF THE UNITED STATES

January 25 (legislative day, January 3), 1989

Mr. Cranston (for himself, Mr. Matsunaga, Mr. DeConcini, and Mr. Rockefeller) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to increase the rates of disability compensation and dependency and indemnity compensation for veterans and survivors, to increase the allowances paid to disabled veterans pursuing rehabilitation programs and to the dependents and survivors of certain disabled veterans pursuing programs of education, and to improve various programs of benefits and health-care services for veterans; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans Benefits and Health Care Act of 1989".

SEC. 2. REFERENCE TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE II—HEALTH CARE

PART C—HEALTH-CARE ADMINISTRATION

SEC. 221. SECURITY SERVICES.

(a) SECURITY AND LAW ENFORCEMENT FUNCTIONS.—Section 218 is amended by adding at the end the following new subsection:

"(f) Subject to the authority, direction, and control of the Secretary, the Assistant Secretary assigned management, productivity, and logistic support functions shall be responsible for the functional and technical supervision of the performance of security and law enforcement functions under this section.".

(b) Report on Security and Law Enforcement Matters.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing—

(1) the Secretary's plan for improving the training, recruitment, and pay of security and law enforcement personnel of the Department of Veterans Affairs; and

(2) the Secretary's assessment of—

(A) the need for establishing a policy on the issuance of weapons to such personnel assigned to medical centers of the Department located in high crime areas and the use of weapons by such personnel; and

(B) the advisability of reducing the security and law enforcement services at Department facilities that do not have significant security problems in order to increase those services at facilities with more significant security problems.

II

101st CONGRESS
1st Session

S. 404

To amend title 38, United States Code, to extend certain Department of Veterans' Affairs Home Loan Guaranty Program provisions.

IN THE SENATE OF THE UNITED STATES

February 9 (legislative day, January 3), 1989

Mr. Cranston (for himself and Mr. Murkowski) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to extend certain Department of Veterans' Affairs Home Loan Guaranty Program provisions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF HOME LOAN GUARANTY FEE.

Section 1829(c) of title 38, United States Code, is amended by striking out "1989" and inserting in lieu thereof "1991".

SEC. 2. EXTENSION OF "NO-BID" FORMULA FOR DEFAULT PROCEDURES.

Section 1816(c)(11) of title 38, United States Code, is amended by striking out "1989" and inserting in lieu thereof "1991".

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II

101st CONGRESS
1st Session

S. 898

To amend title 38, United States Code, to revise the provisions relating to refinancing loans and manufactured housing loans to veterans, to modify the procedures for the sale of loans by the Secretary of Veterans' Affairs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

May 2 (legislative day, January 3), 1989

Mr. Cranston (by request) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to revise the provisions relating to refinancing loans and manufactured housing loans to veterans, to modify the procedures for the sale of loans by the Secretary of Veterans' Affairs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Veterans' Housing Amendments Act of 1989".

REFINANCING LOANS

SEC. 2. (a) Section 1810 of title 38, United States Code, is amended by striking out subsection (h) in its entirety.

(b) Section 1810(b) of title 38, United States Code, is amended by—

(1) Striking out in paragraph (5) "the loan" and inserting in lieu thereof "except as provided in paragraphs (7) and (8) of this subsection, the loan";

(2) Striking out at the end of paragraph (5) "and,";

(3) Striking out in paragraph (6) "property." and inserting in lieu thereof, "property;"; and

(4) Inserting after paragraph (6) the following new paragraphs:

"(7) in the case of a loan made pursuant to subsection (a)(5) of this section to refinance:

"(A) a construction loan,

"(B) an installment land sales contract, or

"(C) a loan obtained by a previous owner of the property which was assumed by the veteran, provided such loan is at a lower interest rate than the loan being refinanced,

the loan to be paid by the veteran does not exceed the lesser of the reasonable value of the dwelling or farm resident as determined pursuant to section 1831 of this title, or the sum of the outstanding balance on the loan to be refinanced plus such closing costs (including discounts) specified by the Secretary in regulations which were actually paid by the veteran; and

"(8) in the case of a loan made pursuant to subsection (a)(5) of this section for any purpose other than those described in paragraph (7) of this subsection, the loan to be paid by the veteran does not exceed 90 percent of the reasonable value of the dwelling or farm residence as determined pursuant to section 1831 of this title.".

SALE OF VENDEE LOANS

SEC. 3. Section 1833(a) of title 38, United States Code, is amended by striking out paragraph (3) in its entirety and inserting in lieu thereof:

"(3) The Secretary may sell any note evidencing such a loan in order to maintain the effective functioning of the loan guaranty program under this chapter—

"(A) with recourse; or

"(B) without recourse. In order to assure such sales without recourse will maximize the proceeds to the Loan Guaranty Revolving Fund, the Secretary shall:

"(i) consult with a professional financial advisor;

"(ii) review the experience of other Federal agencies that have conducted loan asset sales without recourse;

"(iii) explore such marketing strategies as overcollateralized loans or private reinsurances; and

"(iv) accept bids only when they appropriately reflect the prevailing interest rates and characteristics of the loans.".

EXTENSION OF LOAN FEE

SEC. 4. Section 1829(c) of title 38, United States Code, is amended by striking out "1989" and inserting in lieu thereof "1991".

REVISION AND REPEAL OF CERTAIN MANUFACTURED HOME LOAN REQUIREMENTS

SEC. 5. (a) Section 1812(h) of title 38, United States Code, is amended by—

(1) striking out the last sentence of paragraph (1); and

(2) striking out paragraph (2) in its entirety, and inserting in lieu thereof:

"(2) Any manufactured housing unit properly displaying a certification of conformity to all applicable Federal manufactured home construction and safety standards pursuant to section 616 of the National Manufactured Housing Construction and Safety Standards

Act of 1974 (42 U.S.C. 5415) shall be deemed to meet the standards required by paragraph (1) of this subsection.".

(b) Section 1812(j) of title 38, United States Code, is amended by—

(1) striking out "refuses to permit the inspections provided for in subsection (h) of this section; or in the case of manufactured homes which are determined by the Secretary not to conform to the aforesaid standards; or where the manufacturer of manufactured homes"; and

(2) striking out "warranty." and inserting in lieu thereof "warranty; or in the case of manufactured homes which are determined by the Secretary not to conform to the standards provided for in subsection (h) of this section; or in the case of a manufacturer who has engaged in procedures or practices determined by the Secretary to be unfair or prejudicial to veterans or to the Government.".

(c) Section 1812(l) of title 38, United States Code, is amended by striking out "the results of inspections required by subsection (h) of this section,".

PUBLIC AND COMMUNITY WATER AND SEWERAGE SYSTEMS

SEC. 6. Section 1804 of title 38, United States Code, is amended by—

(a) striking out subsection (e) in its entirety; and

(b) redesignating subsection (f) as subsection (e).

OFFSET OF TAX REFUND FOR HOUSING LOAN DEBT

SEC. 7. Section 1826 of title 38, United States Code, is amended by—

(a) Striking out "No" and inserting in lieu thereof:

"(a) Except as provided in subsection (b) of this section, no"; and

(b) Inserting at the end thereof the following new subsection:

"(b) This section shall not apply to the reduction of a refund of Federal taxes by the Secretary of the Treasury pursuant to section 3720A of title 31, United States Code.".

TIME LIMIT FOR HOUSING DEBT WAIVER

SEC. 8. Section 3102(b) of title 38, United States Code, is amended by—

(a) Striking out "101 and 1801" and inserting in lieu thereof, "101, 1801, and 1802(a)(2)(C)(ii) of this title"; and

(b) Inserting at the end thereof, "An application for relief under this subsection must be made (1) within 180 days from the date of notification of the indebtedness by the Secretary to the debtor, or within such longer period as the Secretary determines is reasonable in a case in which the payee demonstrates to the satisfaction of the Secretary that such notification was not actually received by such debtor within a reasonable period after such date; or (2) September 30, 1991, if notice of such debt was provided before October 1, 1989.".

TECHNICAL CORRECTION REGARDING ENTITLEMENT

SEC. 9. Section 1802(a)(2)(C)(ii) of title 38, United States Code, is amended by inserting at the end thereof, "For purposes of this chapter, a person described in this subclause shall be considered to be a veteran notwithstanding that such person has never been discharged or released from active duty."

MAKE CLAIM PAYMENT AND PROPERTY ACQUISITION PROCEDURES PERMANENT

SEC. 10. Section 1832(c) of title 38, United States Code, is amended by striking out paragraph (11) in its entirety.

EFFECTIVE DATES

SEC. 11. (a) The amendments made by sections 2, 5, and 6 of this Act shall take effect October 1, 1989.

(b) The amendments made by sections, 3, 4, 7, 8, 9, and 10 of this Act shall take effect upon enactment of this Act.

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II

101st CONGRESS
1st Session

S. 1153

To amend title 38, United States Code, to provide for the establishment of presumptions of service-connection between certain diseases experienced by veterans who served in Vietnam during the Vietnam era and exposure to certain toxic herbicide agents used in Vietnam; to provide for interim benefits for veterans of such service who have certain diseases; to improve the reporting requirements relating to the "Ranch Hand Study"; and for other purposes.

IN THE SENATE OF THE UNITED STATES

June 8 (legislative day, January 3), 1989

Mr. Daschle (for himself, Mr. Kerry, Mr. Cranston, Mr. Jeffords, Mr. DeConcini, Mr. Matsunaga, Mr. Rockefeller, Mr. Specter, Mr. Bradley, Mr. Simon, Mr. Wirth, Mr. Pell, Mr. Kerrey, Mr. Burdick, Mr. Harkin, Mr. Gore, Mr. Bingaman, Mr. Kohl, Mr. Moynihan, Mr. Biden, Mr. Pressler, and Mr. Chafee) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to provide for the establishment of presumptions of service-connection between certain diseases experienced by veterans who served in Vietnam during the Vietnam era and exposure to certain toxic herbicide agents used in Vietnam; to provide for interim benefits for veterans of such service who have certain diseases; to improve the reporting requirements relating to the "Ranch Hand Study"; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989".

SEC. 2. INTERIM PERIOD FOR AWARD OF BENEFITS FOR VIETNAM VETERANS WITH NON-HODGKIN'S LYMPHOMA AND CERTAIN SARCOMAS.

(a) PRESUMPTIVE DISABILITY AND DEATH BENEFITS.—(1) In the case of a veteran—

(A) who served in the active military, naval, or air service in Vietnam during the Vietnam era, and

(B) who has—

(i) non-Hodgkin's lymphoma, or

(ii) a soft-tissue sarcoma,

the Secretary of Veterans Affairs shall, except as provided in subsection (b), pay a monthly disability benefit to the veteran in accordance with this section for any disability resulting from that disease.

(2) If a veteran referred to in paragraph (1) dies from a disease referred to in clause (B) of such paragraph, the Secretary shall pay a monthly death benefit to the survivors of the veteran in accordance with this section.

(b) EXCEPTIONS.—Benefits may not be paid in the case of a veteran under this section with respect to a disease referred to in subsection (a)(1)(B) if—

(1) there is affirmative evidence that such disease was not incurred by that veteran during active military, naval, or air service in Vietnam during the Vietnam era; or

(2) there is affirmative evidence to establish that, between the date of that veteran's most recent departure from Vietnam during such service and the onset of such disease, the veteran suffered an intercurrent injury or disease recognized as a cause of such disease referred to in subsection (a)(1)(B).

(c) DISABILITY BENEFIT.—A disability benefit payable to a veteran under this section for a disability resulting from a disease referred to in subsection (a)(1)(B) shall be paid at the rate at which compensation would be payable under chapter 11 of title 38, United States Code, to that veteran for such disability if the disability were determined to be service-connected.

(d) DEATH BENEFIT.—(1) A death benefit is payable under this section to the survivors of a deceased veteran who, if the cause of the veteran's death had been a service-connected or compensable disability, would be entitled to dependency and indemnity compensation under chapter 13 of that title.

(2) The amount of the death benefit payable to a survivor of a deceased veteran under this section shall be the rate that would be applicable to such survivor under such chapter 13 if the veteran's death had been the result of a service-connected or compensable disability.

(e) NONDUPLICATION OF BENEFITS.—A benefit may not be paid under this section with respect to a disability or death of a veteran resulting from a disease referred to in subsection (a)(1)(B) for any month for which compensation is payable to that veteran for that disability under chapter 11 of title 38, United States Code, or for which dependency and indemnity compensation is payable for that death under chapter 13 of such title.

(f) TREATMENT OF DISABILITY OR DEATH AS SERVICE-CONNECTED EXCEPT FOR COMPENSATION PURPOSES.—A disability or death from a disease referred to in subsection (a)(1)(B) not otherwise considered service-connected for purposes of laws administered by the Department of Veterans Affairs shall be treated for purposes of all laws of the United States (other than the provisions of chapter 11 (other than sections 357, 358, and 361) of title 38, United States Code, and chapter 13 of such title) as if such disability or death were service-connected. The receipt of a disability benefit under this section shall be treated for purposes of all laws of the United States as if such benefit were disability compensation under chapter 11 of such title. The receipt of a death benefit under this section shall be treated for purposes of all laws of the United States as if such benefit were dependency and indemnity compensation under chapter 13 of such title.

(g) AWARD OF BENEFITS.—Section 3010(g) of title 38, United States Code, shall apply to the award of benefits under this section.

(h) EXPIRATION OF INTERIM BENEFITS.—(1) No benefit may be paid or service provided by virtue of this section for any period beginning after April 15, 1992.

(2) If a joint resolution described in paragraph (3) (relating to the extension of authority to pay benefits under this section or the making of such authority permanent) is introduced in either House of Congress after January 1, 1992, Congressional action on such joint resolution shall, subject to paragraph (8), be subject to the rules set out in this subsection.

(3) For purposes of paragraph (2), the term "joint resolution" means only a joint resolution—

(A) which does not have a preamble;

(B) the matter after the resolving clause of which is—

(i) as follows: "That section 2(h)(1) of the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989 is amended by striking out 'April 15, 1992' and inserting in lieu thereof

'__________________________________'.", the blank space being filled with a date; or

(ii) as follows: "That paragraph (1) of section 2(h) of the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989 is repealed"; and

(C) the title of which is—

(i) as follows: "A joint resolution extending the authority to pay certain benefits relating to military service in Vietnam"; or

(ii) as follows: "A joint resolution making permanent the authority to pay certain benefits relating to military service in Vietnam".

(4) A resolution described in paragraph (3) introduced in the House of Representatives shall be referred to the Committee on Veterans' Affairs of the House of Representatives. A resolution described in paragraph (3) introduced in the Senate shall be referred to the Committee on Veterans' Affairs of the Senate.

(5) If the committee to which a resolution described in paragraph (3) is referred has not reported such resolution (or an identical resolution) within the 60-day period beginning on the date on which such resolution is introduced, such committee shall be discharged from further consideration of such resolution as of the day after the last day of such period, and such resolution shall be placed on the appropriate calendar of the House involved.

(6)(A) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under paragraph (5)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution (but only on the day after the calendar day on which Member announces to the House concerned the Member's intention to do so). All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

(B) Debate on the resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(C) Immediately following the conclusion of the debate on a resolution described in paragraph (3) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in paragraph (3) shall be decided without debate.

(7)(A) If, before the passage by one House of a resolution of that House described in paragraph (3), that House receives from the other House a resolution described in paragraph (3), then the procedures specified in this paragraph shall apply.

(B) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (C)(ii).

(C) With respect to a resolution described in paragraph (3) of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(D) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(8) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in paragraph (3), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(i) NOTIFICATION OF THE PROVISIONS OF THIS SECTION.—(1) The Secretary of Veterans Affairs shall take all reasonable actions—

(A) to publicize the provisions of this section, not later than 30 days after the date of the enactment of this Act; and

(B) to provide actual notice of the provisions of this section, not later than 30 days after the date of the enactment of this Act—

(i) to each person described in subsection (a) who, before the date specified in subsection (k), has filed any claim for benefits under programs administered by the Department of Veterans Affairs on the basis of a disease referred to in subsection (a)(1)(B); and

(ii) in the case of a veteran who dies after filing such a claim but before the provisions of this section are publicized, to the surviving spouse, children, and parents of such veteran, if any.

(2) The Secretary shall enclose with at least three distributions of benefits payment checks to each veteran or other person receiving benefits under this section a notice that the authority to pay benefits under this section is temporary. Each notice shall contain the date of the expiration of such authority. The first notice shall be enclosed with the first payment of such benefits to a veteran. The last notice shall be enclosed with the last payment of such benefits. At least one notice shall be enclosed with a payment distributed in approximately the middle of the estimated period during which the authority is to be in effect.

(j) DEFINITIONS.—For the purposes of this section—

(1) the term "veteran" has the meaning given such term in sections 101(2) and 401 of title 38, United States Code; and

(2) the terms "child" and "parents" have the meanings given such terms in paragraphs (4) and (5), respectively, of section 101 of such title.

(k) EFFECTIVE DATE.—This section, other than subsection (i), shall take effect on October 1, 1989. Benefits shall be paid in accordance with this section for periods beginning on or after such date, but no benefit may be paid for any period before such date by reason of the enactment of this section.

SEC. 3. PRESUMPTION OF SERVICE CONNECTION FOR CHLORACNE.

Section 312 of title 38, United States Code, is amended by adding at the end the following new subsection:

"(d) For the purposes of section 310 of this title, and subject to the provisions of section 313 of this title, in the case of a veteran who, during active military, naval, or air service, served in Vietnam during the Vietnam era, the disease of chloracne shall be considered to have been incurred in or aggravated by such service in Vietnam, notwithstanding there is no record of evidence of such disease during the period of such service in Vietnam, if such disease or another acneform disease consistent with chloracne became manifest to a 10 percent degree of disability or more within one year after the last date on which that veteran performed such service in Vietnam.".

SEC. 4. PRESUMPTION OF SERVICE CONNECTION FOR DISEASES ASSOCIATED WITH EFFECTS OF EXPOSURE TO CERTAIN HERBICIDE AGENTS.

(a) FINDINGS.—Congress makes the following findings:

(1) It is in the public interest to provide for an independent nonprofit scientific organization which has appropriate expertise and is not connected to the De-

partment of Veterans Affairs to review and evaluate the available scientific evidence regarding associations between diseases and exposure to dioxin and other chemical compounds in herbicides and to make judgments on the degree and probability of such associations, because there is no uniform body of scientific literature on such issues.

(2) The standard of proof required for a scientific conclusion of causation is higher than the standard of proof required for justification of a presumption, for purposes of veterans disability compensation laws, that an adverse health effect is connected, based on sound medical and scientific evidence, to active service in the Armed Forces of the United States.

(b) IN GENERAL.—(1) Subchapter II of chapter 11 of title 38, United States Code, is amended by inserting after section 312 the following new section:

"§ 312A. Presumption of service connection for diseases associated with effects of exposure to certain herbicide agents

"(a) IN GENERAL.—(1) For the purposes of section 310 of this title, and subject to section 313 of this title, in the case of a Vietnam veteran who, during Vietnam service, was exposed to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid or to any other herbicide agent, each disease (if any) listed in regulations prescribed by the Secretary in accordance with this section and identified in such regulations as having positive association with the biological effects of exposure to such herbicide agent shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such disease during the period of such service.

"(2) For the purposes of this subsection, a veteran who performed Vietnam service and has a disease referred to in paragraph (1) of this subsection shall be presumed to have been exposed during such service to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid, and may be presumed to have been exposed during such service to any other chemical compound in an herbicide agent, unless there is affirmative evidence to establish conclusively that the veteran was not exposed to any such agent during such service.

"(3) The Secretary may extend the applicability of paragraph (1) of this subsection to the case of any veteran who, during the performance of active military, naval, or air service outside Vietnam, was exposed to an agent of the same type as the herbicide agent referred to in paragraph (1) of this subsection.

"(b) DISEASES TO BE PRESCRIBED IN REGULATIONS.—(1) Whenever the Secretary determines pursuant to this section that there is positive association between any disease and the biological effects of exposure to an herbicide agent in Vietnam, the Secretary shall prescribe regulations listing each disease having such positive association. In the case of each disease listed in the regulations, the Secretary shall identify the herbicide agent that causes the biological effects with which the disease has positive association. After the Secretary prescribes regulations pursuant to this paragraph, the Secretary shall periodically revise such regulations, as appropriate, to reflect determinations periodically made pursuant to paragraph (2) of this subsection.

"(2) The Secretary shall periodically (not less often than biennially)—

"(A) determine whether any disease not listed in regulations under this section has positive association with such effects; and

"(B) determine whether any disease listed in such regulations does not have positive association with such effects.

"(3) The Secretary shall make determinations for the purpose of this subsection on the basis of reports received by the Secretary from a contract scientific organization pursuant to this section and all other relevant scientific evidence, information, or analyses available to the Secretary at the time of the determinations.

"(c) UTILIZATION OF CONTRACT SCIENTIFIC ORGANIZATION.—In prescribing and revising regulations for the purposes of subsection (b), the Secretary shall obtain, by contract, the determinations and estimates of a contract scientific organization as provided in this section.

"(d) REQUIRED ACTIVITIES OF CONTRACT SCIENTIFIC ORGANIZATIONS.—(1) Each contract entered into under subsection (c) of this section shall provide for a contract scientific organization—

"(A) to determine, in the case of each herbicide agent—

"(i) which diseases (if any) have positive association with the biological effects of exposure to such agent, including specifically effects involving porphyrin synthesis, nervous system function, immune function, reproduction, and birth defects, and psychological and psychiatric effects;

"(ii) which diseases (if any) have limited positive association with such biological effects;

"(iii) which diseases (if any) have insubstantial association with such biological effects; and

"(iv) to the extent practicable, the biological basis for the positive, limited positive, and insubstantial associations of diseases referred to in subclauses (i), (ii), and (iii) of this clause with such biological effects; and

"(B) to estimate the extent of the association between each such disease and such biological effects using methods as quantitative and as objective as the relevant available data permit.

"(2) The contract scientific organization shall specifically determine whether there is positive, limited positive, or insubstantial association between the biological effects referred to in paragraph (1) of this subsection and the following diseases:

"(A) Non-Hodgkin's lymphoma.

"(B) Each soft-tissue sarcoma.

"(C) Lung cancer.

"(D) Each other cancer.

"(e) REQUIRED PROVISIONS FOR FIRST CONTRACT.—(1) The first contract entered into under subsection (c) of this section shall provide for the contract scientific organization—

"(A) to conduct as comprehensive a survey and evaluation as is practicable of the completed and ongoing scientific studies of, and other scientific evidence or information regarding, the effects that herbicide agents have on humans or other animals that have been exposed to such agents, including an evaluation of the CDC Selected Cancers Study report; and

"(B) make its determinations and estimates on the basis of the results of such survey and evaluation.

"(2) The contract scientific organization shall conduct the survey and evaluation referred to in paragraph (1)(A) of this subsection through a panel composed of recognized experts in toxicology, medicine, epidemiology, statistics, biochemistry, and related fields. The conduct of such survey shall be subject to appropriate peer review.

"(f) REQUIRED CONTRACT PROVISIONS RELATING TO PERIODIC DETERMINATIONS OF THE SECRETARY.—A contract entered into under subsection (c) of this section in connection with the Secretary's periodic determinations under subsection (b)(2) of this section shall require a contract scientific organization—

"(1) to conduct as comprehensive a survey and evaluation as is practicable of the scientific studies, evidence, and information referred to in subsection (e)(1)(A) of this section that have become available since the last such survey and evaluation under this section; and

"(2) make its determinations and estimates on the basis of the results of such survey and evaluation and all other surveys and evaluations conducted for the purposes of this section.

"(g) REPORTS OF CONTRACT SCIENTIFIC ORGANIZATIONS.—(1) Each contract scientific organization making determinations and estimates under this section shall transmit to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives a written report regarding its determinations and estimates.

"(2) Each report shall contain—

"(A) the name of each disease (if any) determined to have positive association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent;

"(B) the name of each disease (if any) determined to have limited positive association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent;

"(C) the name of each disease (if any) determined to have insubstantial association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent; and

"(D) with respect to each disease named pursuant to clauses (A), (B), and (C) of this paragraph—

"(i) a discussion of the biological basis for the association;

"(ii) the contract scientific organization's estimate of the statistical significance of the association;

"(iii) the contract scientific organization's estimate of the relative risk for such disease in veterans who, during Vietnam service, were exposed to an herbicide agent; and

"(iv) the probability that the estimates referred to in subclauses (ii) and (iii) are correct.

"(3) Estimates and probabilities are not required under clauses (ii), (iii), and (iv) of paragraph (2)(D) of this subsection when the available data do not permit meaningful estimates and probabilities.

"(4)(A) If a contract scientific organization determines that a disease has positive association with the biological effects of exposure to an herbicide agent used in Vietnam, such organization shall determine whether there is a reasonable basis for concluding that a Vietnam veteran with the highest level of exposure to that herbicide agent in Vietnam was exposed to such agent under the circumstances necessary for such biological effects.

"(B) If a contract scientific organization determines that there is no such reasonable basis, the organization shall state that determination in a report under this subsection and include in such report—

"(i) a description of the evidence that supports such determination;

"(ii) a description of the evidence (if any) that supports alternative conclusions; and

"(iii) a full discussion of the organization's reasons for such determination, including a discussion of the reasons for the organization's determination that the evidence referred to in clause (i) of this subparagraph outweighs the evidence (if any) referred to in clause (ii) of this subparagraph.

"(C) A determination with respect to reasonable basis is not required under subparagraph (A) of this paragraph when the available data do not permit a meaningful determination.

"(5) The first report under this subsection shall be transmitted to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives on or before the later of (A) the date 60 days after the date on which the contract scientific organization obtains a copy of the CDC Selected Cancers Study report, or (B) the date one year after the date of the enactment of the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989.

"(h) ACTIONS OF THE SECRETARY AFTER RECEIVING THE FIRST REPORT.—(1) Not later than 60 days after the date on which the Secretary receives the first report under subsection (g) of this section, the Secretary shall—

"(A) for the purpose of subsection (b)(1) of this section—

"(i) determine in accordance with subsection (b)(3) of this section whether there is positive association between any disease and the biological effects of exposure to an herbicide agent in Vietnam; and

"(ii) if so, issue proposed regulations listing each such disease and specifying such agent;

"(B) transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing the scientific basis for including each disease listed in such proposed regulations, and

"(C) if any disease listed in the first report under subsection (g) of this subsection as having positive association is not listed in such proposed regulations—

"(i) include in the report to the Committees on Veterans' Affairs the scientific basis for not including that disease in the proposed regulations; and

"(ii) publish in the Federal Register a notice that such disease is not listed in the proposed regulations despite the report under subsection (g) and include in such notice a discussion of such scientific basis.

"(2) Not later than 60 days after the date on which the Secretary issues any proposed regulations pursuant to paragraph (1) of this subsection, the Secretary shall issue final regulations under subsection (b). Such regulations shall be effective on the date of issuance.

"(i) ACTIONS OF THE SECRETARY AFTER RECEIVING A PERIODIC REPORT.—(1) Upon receiving a contract scientific organization's report after a periodic survey and evaluation conducted for the purpose of subsection (b)(2) of this section, the Secretary shall—

"(A) determine in accordance with subsection (b)(3) of this section whether—

"(i) any disease named in such report not listed in regulations under subsection (b) of this section has positive association with the biological effects of exposure to an herbicide agent in Vietnam; and

"(ii) any disease listed in such regulations does not have positive association with such effects; and

"(B) promptly transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing the Secretary's determinations under clause (A) of this paragraph and the scientific bases for such determinations.

"(2)(A) Not later than 60 days after transmitting a report to the Committees on Veterans' Affairs under paragraph (1)(B) of this subsection, the Secretary shall prescribe or revise regulations, as the case may be, pursuant to subsection (b) of this section as may be necessary to reflect the Secretary's determinations included in that report. The regulations or revisions of regulations, as the case may be, shall take effect 30 days after the date on which the Secretary issues the proposed regulations or revisions, as the case may be.

"(B) If any disease listed in a periodic report under subsection (g) of this section as having positive association is not listed in such regulations or revisions of regulations, as the case may be, the Secretary shall, not later than 60 days after transmitting a report under subparagraph (A) of this paragraph, publish in the Federal Register a notice that such disease is not listed in the proposed regulations despite such report and include in such notice a discussion of the scientific basis for not including that disease in such regulations or revisions.

"(j) EFFECT OF REMOVAL OF DISEASE FROM REGULATIONS.—Whenever a disease is removed from regulations pursuant to paragraph (2) of subsection (i) of this section as a result of a determination under paragraph (1)(A)(ii) of such subsection—

"(1) any veteran who was awarded compensation for such disease on the basis of the presumption provided in subsection (a) of this section before the effective date of the removal shall continue to be entitled to receive compensation on such basis; and

"(2) any survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from such disease on the basis of such presumption shall continue to be entitled to receive dependency and indemnity compensation on such basis.

"(k) LIMITATION ON CONTRACT AUTHORITY.—The contract authority provided in this section shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

"(l) TERMINATION OF EFFECTIVENESS OF THIS SECTION.—(1) Subsections (b) through (i) and (k) of this section shall cease to be effective 10 years after the first day of the fiscal year in which a contract scientific organization transmits to the Secretary the first report under subsection (g) of this section.

"(2) Paragraph (1) shall not affect the continued effectiveness of—

"(A) subsection (a) of this section and the regulations referred to in such subsection; and

"(B) subsection (j) of this section.

"(m) DEFINITIONS.—For the purposes of this section—

"(1) the term 'Vietnam veteran' means a veteran who performed Vietnam service;

"(2) the term 'Vietnam service' means active military, naval, or air service in Vietnam during the Vietnam era;

"(3) the term 'herbicide agent' means an agent in an herbicide used in support of United States and allied military operations in Vietnam during the Vietnam era;

"(4) the term 'biological effect', with respect to exposure to an herbicide agent, means—

"(A) each known biological effect of such exposure on humans, including those biological effects resulting from relevant host and environmental factors; and

"(B) each biological effect of such exposure on humans that it is reasonable to infer on the basis of the known biological effects of such exposure on appropriate animal models;

"(5) the term 'positive', with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that the credible evidence for the association is equal to or outweighs the credible evidence against the association;

"(6) the term 'limited positive', with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that the credible evidence against the association outweighs the credible evidence for the association but that there is substantial credible evidence for the association;

"(7) the term 'insubstantial', with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that there is some credible evidence for the association but the evidence is not substantial;

"(8) the term 'relative risk', with respect to a report of a contract scientific organization for the purposes of subsection (g) of this section, shall have the meaning determined by such organization and specified in such report;

"(9) the term 'contract scientific organization', with respect to a contract under this section, means—

"(A) the National Academy of Sciences; or

"(B) in the event that the Secretary determines that the National Academy of Sciences is unwilling to enter into such contract, any other appropriate private nonprofit scientific organization which has appropriate expertise and has no connection with the Department of Veterans Affairs and which the Secretary identifies to the Committees on Veterans' Affairs of the Senate and the House of Representatives in a written notification received by such committees at least 90 days before the date on which such contract is entered into;

"(10) the term 'soft-tissue sarcoma' means any sarcoma other than osteosarcoma, condrosarcoma, Kaposi's sarcoma, and mesothelioma; and

"(11) the term 'CDC Selected Cancers Study report' means the report submitted to Congress by the Secretary of Veterans Affairs that contains the final results of the Selected Cancers Study conducted by the Centers for Disease Control pursuant to section 307 of the Veterans Health Programs Extension and Improvement Act of 1979 (Public Law 96-151; 38 U.S.C. 219 note).".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 312 the following new item:

"312A. Presumption of service connection for diseases associated with effects of exposure to certain herbicide agents.".

(c) CONFORMING AMENDMENT.—Section 313 of title 38, United States Code, is amended by inserting "or 312A" after "section 312" each place it appears.

(d) INTERIM REGULATIONS.—If the authority to pay benefits under section 2 of this Act expires before the Secretary of Veterans Affairs issues final regulations under section 312A(h) of title 38, United States Code (as added by subsection (b)), the Secretary shall issue emergency regulations, effective upon issuance, providing for the payment of disability compensation under chapter 11 of such title to each veteran or survivor who receives benefits under section 2 of this Act for a disease listed in regulations (if any) proposed by the Secretary under section 312A(h)(1)(A) of such title (as added by subsection (b)). Payment of such disability compensation shall be effective on the date of the expiration of the authority under section 2 of this Act. The Secretary shall pay disability compensation to such a veteran pursuant to this paragraph without requiring such veteran to submit an application in addition to the application submitted for benefits under section 2 of this Act.

(e) SPECIAL EFFECTIVE DATE FOR AWARDS OF DISABILITY COMPENSATION.—If the Secretary of Veterans Affairs issues final regulations under subsection (h)(2) of section 312A of title 38, United States Code (as added by subsection (b)), after April 15, 1993, any award of disability compensation under chapter 11 of such title (in the case of a claim received by the Secretary before the effective date of such final regulations) on the basis of a presumption provided in subsection (a) of such section 312A shall be effective on the later of April 16, 1993, or the date determined under section 3010 of such title. However, benefits may not be paid to any person under chapter 11 of such title pursuant to this subsection for any period for which benefits are paid to such person under such chapter pursuant to subsection (d).

SEC. 5. RESULTS OF EXAMINATIONS AND TREATMENT OF VETERANS FOR DISABILITIES RELATED TO EXPOSURE TO CERTAIN HERBICIDES OR TO SERVICE IN VIETNAM.

(a) IN GENERAL.—The Secretary of Veterans Affairs shall compile and analyze, on a continuing basis, all clinical data that (1) is obtained by the Department of Veterans Affairs in connection with examinations and treatment furnished to veterans by the Department after November 3, 1981, by reason of eligibility provided in section 610(e)(1)(A) of title 38, United States Code, and (2) is likely to be scientifically useful in determining the association, if any, between the disabilities of veterans referred to in such section and exposure to dioxin or any other toxic substance referred to in such section or between such disabilities and active military, naval, or air service in Vietnam during the Vietnam era.

(b) ANNUAL REPORT.—The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives an annual report containing—

(1) the information compiled in accordance with subsection (a);

(2) the Secretary's analysis of such information;

(3) a discussion of the types and incidences of disabilities identified by the Department of Veterans Affairs in the case of veterans referred to in subsection (a);

(4) the Secretary's explanation for the incidence of such disabilities;

(5) other explanations for the incidence of such disabilities considered reasonable by the Secretary;

(6) the Secretary's views on the scientific validity of drawing conclusions from the incidence of such disabilities, as evidenced by the data compiled under subsection (a), about any association between such disabilities and exposure to dioxin or any other toxic substance referred to in section 610(e)(1)(A) of title 38, United States Code, or between such disabilities and active military, naval, or air service, in Vietnam during the Vietnam era; and

(7) the evaluation of such report submitted by the Director of the Office of Technology Assessment pursuant to subsection (c)(2).

(c) CONSULTATION WITH OTA.—(1) The Secretary of Veterans Affairs shall consult with the Director of the Office of Technology Assessment before compiling and analyzing any information under this section and shall submit each annual report required by subsection (b) to the Director before submitting such report to the committees referred to in such subsection.

(2) The Director of the Office of Technology Assessment shall review each annual report submitted under paragraph (1) and transmit to the Secretary of Veterans Affairs the Director's evaluation of the content of the report.

(d) First Report.—The first report under subsection (b) shall be submitted one year after the date of the enactment of this Act.

SEC. 6. TISSUE ARCHIVING SYSTEM.

(a) Establishment of System.—For the purpose of facilitating future scientific research on the effects of exposure of veterans to dioxin and other toxic agents in herbicides used in support of United States and allied military operations in Vietnam during the Vietnam era, the Secretary of Veterans Affairs shall establish and maintain a system for the collection and storage of voluntarily contributed samples of blood and tissue of veterans who performed active military, naval, or air service in Vietnam during the Vietnam era. The system may be administered by the Department of Veterans Affairs or under a contract awarded by the Secretary, whichever is more cost-effective.

(b) Security of Specimens.—The Secretary shall ensure that the tissue is collected and stored under physically secure conditions and that the tissue is maintained in a condition that is useful for research referred to in subsection (a).

(c) Authorized Use of Specimens.—The Secretary may make blood and tissue available from the system for research referred to in subsection (a) in a manner consistent with the privacy rights and interests of the blood and tissue donors.

(d) Limitations on Acceptance of Samples.—The Secretary may prescribe such limitations on the acceptance and storage of blood and tissue samples as the Secretary considers appropriate consistent with the purpose specified in the first sentence of subsection (a).

(e) Consultation Requirements.—(1) To the extent provided under any agreement entered into by the Secretary and the National Academy of Sciences, the Secretary shall consult with the National Academy of Sciences regarding the establishment and maintenance of the tissue archiving system under this section, including any limitation to be prescribed under subsection (d).

(2) In the event that the National Academy of Sciences does not enter into an agreement for consultation under paragraph (1), the Secretary shall consult with the Director of the Office of Technology Assessment on the establishment and

maintenance of the tissue archiving system under this section, including any limitation to be prescribed under subsection (d).

(f) CONTRACT AUTHORITY SUBJECT TO APPROPRIATION.—The contract authority provided in this section shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

SEC. 7. SCIENTIFIC RESEARCH FEASIBILITY STUDIES PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Veterans Affairs shall establish a program to provide for the conduct of studies of the feasibility of conducting additional scientific research on—

(1) health hazards resulting from exposure to dioxin;

(2) health hazards resulting from exposure to other toxic agents in herbicides used in support of United States and allied military operations in Vietnam during the Vietnam era; and

(3) health hazards resulting from active military, naval, or air service in Vietnam during the Vietnam era.

(b) PROGRAM REQUIREMENTS.—(1) Under the program established pursuant to subsection (a), the Secretary shall, pursuant to criteria prescribed pursuant to paragraph

(2), award contracts or furnish financial assistance to non-Government entities for the conduct of studies referred to in subsection (a).

(2) The Secretary shall prescribe criteria for (A) the selection of entities to be awarded contracts or to receive financial assistance under the program, and (B) the approval of studies to be conducted under such contracts or with such financial assistance.

(c) REPORT.—The Secretary shall promptly report the results of studies conducted under the program to the Committees on Veterans' Affairs of the Senate and the House of Representatives.

(d) CONSULTATION WITH THE NATIONAL ACADEMY OF SCIENCES.—To the extent provided under any agreement entered into by the Secretary and the National Academy of Sciences (1) the Secretary shall consult with the National Academy of Sciences regarding the establishment and administration of the program under subsection (a), and (2) the National Academy of Sciences shall review the studies conducted under contracts awarded pursuant to the program and the studies conducted with financial assistance furnished pursuant to the program. The agreement shall require the National Academy of Sciences to submit to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives any recommendations that the National Academy of Sciences considers appropriate regarding any studies reviewed under the agreement.

(e) AUTHORITY SUBJECT TO APPROPRIATION.—The authorities to enter into contracts and to furnish financial assistance provided in this section shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

SEC. 8. OUTREACH SERVICES.

Section 1204(a) of the Veterans' Benefits Improvement Act of 1988 (division B of Public Law 100–687; 102 Stat. 4125) is amended—

(1) in clause (1), by striking out ", as such information on health risks becomes known";

(2) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively;

(3) by inserting "(1)" after "PROGRAM.—"; and

(4) by adding at the end the following new paragraph:

"(2) The Secretary of Veterans Affairs shall annually furnish updated information on health risks described in paragraph (1)(A) to veterans referred to in paragraph (1).".

SEC. 9. REPORT RELATING TO RESEARCH ON TREATMENTS FOR EXPOSURE TO DIOXIN AND OTHER TOXIC AGENTS.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing a discussion of the research being conducted to identify and develop treatments for physiological absorption of dioxin and other toxic agents similar to the toxic agents in herbicides used in support of United States and allied operations in Vietnam during the Vietnam era, including research relating to exposure to dioxin and other toxic agents outside Vietnam.

SEC. 10. EXTENSION OF HEALTH-CARE ELIGIBILITY BASED ON AGENT ORANGE OR IONIZING RADIATION EXPOSURE.

Section 610(e)(3) of title 38, United States Code, is amended by striking out "September 30, 1990" and inserting in lieu thereof "December 31, 1993".

SEC. 11. RANCH HAND STUDY AMENDMENTS.

Section 1205 of the Veterans' Benefits Improvement Act of 1988 (division B of Public Law 100-687; 102 Stat. 4126) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively;

(2) by inserting after subsection (b), the following new subsection (c):

"(c) ADVISORY RELATIONSHIP.—The Advisory Committee may consult directly with and provide information and recommendations directly to the Department of the Air Force scientists conducting the Ranch Hand Study, and such scientists may consult directly with and provide information and recommendations directly to the Advisory Committee. No officer or employee of the Federal Government may intervene in or impair direct communication between the Advisory Committee and such scientists under this section except as may be necessary to prevent an inappropriate disclosure of classified information."; and

(3) in subsection (d), as redesignated by clause (1)—

(A) by adding at the end of paragraph (1) the following: "The schedule shall provide for the preparation and submission of annual reports and a final report."; and

(B) in paragraph (4), by inserting "in" after "report referred to".

SEC. 12. DEFINITIONS.

In this Act—

(1) the terms "veteran", "service-connected", "active military, naval, or air service", and "Vietnam

era" shall have the meanings given those terms in paragraphs (2), (16), (24), and (29), respectively, of section 101 of title 38, United States Code;

(2) the term "disability" refers to a disability within the meaning of chapter 11 of such title; and

(3) the term "soft-tissue sarcoma" means any sarcoma other than osteosarcoma, condrosarcoma, Kaposi's sarcoma, and mesothelioma.

SEC. 13. EFFECTIVE DATE.

Except as provided as in section 2(k), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

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II

101st CONGRESS
1st Session

S. 1158

To amend chapter 37 of title 38, United States Code, to restructure the loan guaranty provided under such chapter and to ensure the solvency of the housing loan guaranty program conducted under that chapter.

IN THE SENATE OF THE UNITED STATES

June 9 (legislative day, January 3), 1989

Mr. Cranston introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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A BILL

To amend chapter 37 of title 38, United States Code, to restructure the loan guaranty provided under such chapter and to ensure the solvency of the housing loan guaranty program conducted under that chapter.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) Short Title.—This Act may be cited as the "Veterans Home Loan Guaranty Restructuring and Solvency Act of 1989".

(b) REFERENCES TO TITLE 38.—Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. ESTABLISHMENT OF HOME LOAN GUARANTY FUND AND LOAN FEE.

(a) NEW FUND.—(1) Chapter 37 is amended by inserting after section 1824 the following new section:

"§ 1824A. Home Loan Guaranty Fund

"(a) There is hereby established in the Treasury of the United States a revolving fund known as the Home Loan Guaranty Fund (hereinafter referred to as the 'Guaranty Fund').

"(b) The Guaranty Fund shall be available to the Secretary for all operations (other than administrative expenses) carried out with respect to (1) housing loans guaranteed or insured under this chapter which are made after September 30, 1989, and (2) loans to which section 1814 of this title applies and which are assumed after such date.

"(c)(1) All fees collected under section 1829 of this title after September 30, 1989, shall be credited to the Guaranty Fund.

"(2) There shall also be credited to the Guaranty Fund—

"(A) for each housing loan guaranteed or insured under this chapter after September 30, 1989, an amount equal to 0.25 percent of the original amount of such loan for each of the three fiscal years beginning with the fiscal year in which such loan is guaranteed or insured;

"(B) all collections of principal and interest and the proceeds from the use of property held, or from the sale of property disposed of, with respect to loans to which subsection (b) of this section applies; and

"(C) all income from the investments described in subsection (d) of this section.

"(d)(1) The Secretary of the Treasury shall invest the portion of the Guaranty Fund that is not required to meet current payments made from the Guaranty Fund, as determined by the Secretary of Veterans Affairs, in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

"(2) In making investments under paragraph (1) of this subsection, the Secretary of the Treasury shall select obligations having maturities suitable to the needs of the Guaranty Fund, as determined by the Secretary of Veterans Affairs, and bearing interest at suitable rates, as determined by the

Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.".

(2) The table of sections of subchapter III of chapter 37 is amended by inserting after the item relating to section 1824 the following new item:

"1824A. Home Loan Guaranty Fund.".

(b) LOAN FEE.—Section 1829 is amended to read as follows:

"§ 1829. Loan fee

"(a)(1) Except as provided in subsection (c), a fee shall be collected from each veteran obtaining a housing loan guaranteed or insured under this chapter, and from each person obtaining a loan under section 1833(a) of this title, and no such loan may be guaranteed, made, or insured under this chapter until the fee payable under this section has been remitted to the Secretary.

"(2) The amount of such fee shall be 1.25 percent of the total loan amount, except that—

"(A) in the case of a loan made under section 1833(a) of this title, the amount of such fee shall be one percent of the total loan amount;

"(B) in the case of a guaranteed or insured loan for a purchase, or for construction, with respect to which the veteran has made a downpayment of not less than 5 percent of the total purchase price or construction cost, the amount of such fee shall be 0.75 percent of the total loans amount; and

"(C) in the case of a guaranteed or insured loan for a purchase, or for construction, with respect to which the veteran has made a downpayment of not less than 10 percent of the total purchase price or construction cost, the amount of such fee shall be 0.25 percent of the total loan amount.

"(3) The amount of the fee may be included in the loan and paid from the proceeds thereof.

"(b) Except as provided in subsection (c) of this section, a fee shall be collected from a person assuming a loan to which section 1814 of this title applies. The amount of the fee shall be equal to two-thirds of one percent of the balance of the loan on the date of the transfer of the property.

"(c) A fee may not be collected under this section from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse of any veteran (including a person who died in the active military, naval, or air service) who died from a service-connected disability. The Secretary shall, on behalf of such veteran or surviving spouse, deposit in the Home Loan Guaranty Fund (in addition to the amount required to be credited to such fund under section 1824A(c)(2)(A) of this title) the amount equal to the fee that, except for this subsection, would be collected from such veteran or surviving spouse.

"(d)(1) Subject to paragraphs (2) and (3) of this subsection, the Secretary may increase each fee percentage specified in subsections (a) and (b) of this section if the Secretary determines, on the basis of economic projections and analyses, that the Home Loan Guaranty Fund would, except for such increase, be unable to pay the valid claims of holders of defaulted loans during the first 24 months that such increase is to be in effect. In exercising the authority under this paragraph, the Secretary shall increase all such fee percentages by multiplying each such fee percentage by the same factor.

"(2) An increased percentage prescribed by the Secretary under paragraph (1) of this subsection for the computation of a fee required to be collected under subsection (a) or (b) of this section may not exceed the percentage determined by multiplying the percentage specified for such fee in that subsection by 1.2.

"(3) The Secretary may not in any fiscal year increase the fee percentages specified in subsections (a) and (b) of this section unless the Secretary first submits to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing the Secretary's determination to increase such fee percentages, the factor by which such fee percentages are to be increased, and the economic projections and analyses on which the Secretary bases such determination. Any such report shall be submitted not later than the day on which the President, pursuant to section 1105 of title 31, submits to the Congress the budget for the fiscal year in which the increase is proposed to take effect. On the same day that the Secretary submits the report to the committees, the Secretary shall submit a copy of the report to the Director of the Congressional Budget Office.

"(4) Not later than 30 days after the Secretary submits the report to the committees, the Director of the Congressional Budget Office shall transmit to the committees the Director's views on the Secretary's report.".

(c) LIABILITY.—Section 1803 is amended by adding at the end the following new subsection:

"(e) Any individual who pays a fee under section 1829 of this title, or is exempted under section 1829(c) from paying such fee, after September 30, 1989, with respect to a housing loan (other than a loan made under section 1833(a) of this title) shall have no liability to the Secretary with respect to the loan for any loss resulting from any default of such individual except (1) in the case of fraud, misrepresentation, or bad faith by the individual in obtaining the loan or approval of an assumption of the loan or in connection with the loan default, and (2) in the case of any default or liquidation resulting from circumstances not beyond the individual's control.".

(d) CONFORMING AMENDMENTS.—(1) Section 1824 is amended—

(A) in subsection (b), by inserting "and the operations carried out with the Home Loan Guaranty Fund established by section 1824A" before the period at the end of the first sentence; and

(B) in subsection (c)—

(i) by inserting "before October 1, 1989, except that fees collected under subsection (b) of such section 1829 on or after such date with respect to loans which were originally guaranteed, made, or insured before such date shall also be deposited in the Fund" after "title" in clause (2); and

(ii) by inserting "with respect to housing loans guaranteed or insured under this chapter before October 1, 1989" after "chapter" in clause (3).

(2) The last sentence of section 1832(a)(1) is amended by striking out "If" and inserting in lieu thereof "Except as provided in section 1803(e) of this title, if".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1989, with respect to loans closed or assumed on or after that date.

SEC. 3. SALE OF VENDEE LOANS.

(a) IN GENERAL.—Section 1833(a)(3) is amended—

(1) in subparagraph (A), by striking out "1989" and inserting in lieu thereof "1990";

(2) in subparagraph (B), by striking out "1989" and inserting in lieu thereof "1990";

(3) in subparagraph (C), by striking out "1989" and inserting in lieu thereof "1990"; and

(4) by adding at the end the following new subparagraph:

"(D) Notwithstanding the Balanced Budget and Emergency Deficit Control Act of 1985 and the Congressional Budget and Impoundment Control Act of 1974, all amounts received from the sale of such loans shall be credited without any reduction, for the fiscal year in which the amount is received, as offsetting collections of the Loan Guaranty Revolving Fund (established by section 1824 of this title) or the Home Loan Guaranty Fund (established by section 1824A of this title), for which a fee was collected (or from which a fee was exempted from being collected) at the time the loan was originally guaranteed. The total amount credited to the Loan Guaranty Revolving Fund or the Home Loan Guaranty Fund for a fiscal year shall offset outlays attributed to such Fund, as the case may be, during such fiscal year.".

(b) Effective Date.—The amendment made by subsection (a) shall take effect on October 1, 1989.

SEC. 4. COMPUTATION OF ENTITLEMENT AMOUNT.

(a) Optional Increased Entitlement.—Section 1803(a) is amended—

(1) in paragraph (1)(B), by striking out "The" and inserting in lieu thereof "Except in the case of an election pursuant to paragraph (3)(A) of this subsection, the"; and

(2) by adding at the end the following new paragraph:

"(3)(A) Subject to subparagraphs (B) and (C) of this paragraph, the maximum amount of guaranty entitlement available to a veteran for purposes specified in clauses (1), (2), (3), and (6) of section 1810(a) of this title may, upon the election of the veteran, be increased by not more than $10,000 in connection with a specific loan. The Secretary shall collect from that veteran a fee equal to 0.1 percent of the total loan amount for each $1,000 (and fraction of $1,000) by which the veteran elects to increase that maximum amount. The fee shall be deposited in the Home Loan Guaranty Fund.

"(B) The total amount of the guaranty entitlement available to a veteran in connection with a loan for a purchase or construction may not be increased pursuant to subparagraph (A) of this paragraph by an amount which would cause the sum of the guaranty and any downpayment to exceed 25 percent of the price of the purchase or construction.

"(C) The Secretary may waive the limitation in subparagraph (B) of this paragraph in the case of a loan for the purchase or construction of housing whenever the Secretary determines, in accordance with regulations prescribed by the Secretary, that the housing is being purchased or constructed in a housing market area for which it is the general practice of lenders, in the case of loans to be guaranteed under this chapter, to require the payment of points in, or to discount the loans by, such large amounts as to make it unlikely that a veteran could obtain such a loan for the purchase or construction of housing in such market area.

"(D) The amount of the fee imposed by subparagraph (A) of this paragraph may be included in the loan and paid from the proceeds thereof.".

(b) EFFECTIVE DATE AND APPLICABILITY.—The amendments made by subsection (a) shall take effect on October 1, 1989, and shall apply with respect to loans guaranteed or insured under chapter 37 of title 38, United States Code, after September 30, 1989.

SEC. 5. PROCEDURES ON DEFAULT.

(a) NOTIFICATION REQUIREMENT.—Section 1832(a) is amended by adding at the end the following new paragraph:

"(5) When a default has occurred in the payment of any loan made, guaranteed, or insured under this chapter and the holder of the obligation has refused a tender by the veteran of a partial payment of any amount payable under the terms of the loan, the holder of the obligation shall notify the Secretary as soon as such partial payment has been refused. Such notification shall include a statement of the circumstances of the default and the reasons for the holder's refusal.".

(b) COMPUTATION OF NET VALUE.—Section 1832(c)(1)(C) is amended by—

(1) striking out "(i)";

(2) striking out "(ii)" and inserting in lieu thereof "(i)"; and

(3) inserting "(other than the cost of borrowing funds to acquire the property), and minus (ii) 50 percent of the cost to the Government of borrowing the amount equal to the excess, if any, of the total indebtedness over the amount guaranteed under this chapter" before the period at the end.

(c) POSTPONEMENT OF EXPIRATION DATE.—Paragraph (11) of section 1832(c) is amended by striking out "October 1, 1989" and inserting in lieu thereof "October 1, 1991.".

II

101st CONGRESS
1st Session

H. R. 1415

IN THE SENATE OF THE UNITED STATES

June 7 (legislative day, January 3), 1989

Received; read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend chapter 37 of title 38, United States Code, with respect to the veterans' home loan program carried out under such chapter.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Home Loan Mortgage Indemnity Act of 1989".

SEC. 2. ESTABLISHMENT OF SPECIAL INDEMNITY FUND AND LOAN FEE.

(a) SPECIAL INDEMNITY FUND.—(1) Chapter 37 of title 38, United States Code, is amended by adding the following new section after section 1824:

"§ 1824A. Mortgage indemnity fund

"(a) There is hereby established in the Treasury of the United States a revolving fund known as the Veterans' Mortgage Indemnity Fund (hereinafter referred to as the 'Indemnity Fund').

"(b) The Indemnity Fund shall be available to the Secretary for all operations (other than administrative expenses) carried out with respect to housing loans guaranteed or insured under this chapter which are made on or after the effective date of the Veterans' Home Loan Mortgage Indemnity Act of 1989, other than loans to which section 1814 of this title applies and which were originally guaranteed or insured before such effective date.

"(c)(1) All fees collected under section 1829 of this title on or after such effective date shall be credited to the Indemnity Fund, other than fees collected with respect to loans to which section 1814 of this title applies and which were originally guaranteed or insured before such effective date.

"(2) There shall also be credited to the Indemnity Fund—

"(A) for each housing loan guaranteed or insured under this chapter on or after October 1, 1989, an amount equal to 0.25 percent of the original amount of such loan for each of the three fiscal years beginning with the fiscal year in which such loan is guaranteed or insured;

"(B) all collections of principal and interest and the proceeds from the use of property held, or from the sale of property disposed of, with respect to loans to which subsection (b) of this section applies; and

"(C) all income from the investments described in subsection (d) of this section.

"(d)(1) The Secretary of the Treasury shall invest the portion of the Indemnity Fund that is not required to meet current payments made from the Indemnity Fund, as determined by the Secretary of Veterans' Affairs, in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

"(2) Such obligations shall have maturities suitable to the needs of the Indemnity Fund, as determined by the Secretary of Veterans' Affairs, and shall bear interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.".

(2) The table of sections of subchapter III of chapter 37 of such title is amended by inserting after the item for section 1824 the following new item:

"1824A. Mortgage indemnity fund.".

(b) LOAN FEE.—Section 1829 of such title is amended to read as follows:

"§ 1829. Loan fee

"(a)(1) Except as provided in subsection (c), a fee shall be collected from each veteran obtaining a housing loan guaranteed or insured under this chapter, and from each person obtaining a loan under section 1833(a), and no such loan may be guaranteed, made, or insured under this chapter until the fee payable under this section has been remitted to the Secretary.

"(2) The amount of such fee shall be 1.25 percent of the total loan amount, except that—

"(A) in the case of a loan made under section 1833(a), the amount of such fee shall be one percent of the total loan amount; and

"(B) in the case of a guaranteed or insured loan for a purchase or construction with respect to which the veteran has made a downpayment of not less than 5 percent of the total purchase price or construction cost, the amount of such fee shall be 0.75 percent of the total loan amount.

"(3) The amount of the fee may be included in the loan and paid from the proceeds thereof.

"(b) Except as provided in subsection (c), a fee shall be collected from a person assuming a loan to which section 1814 of this title applies. The amount of the fee shall be equal to one-half of 1 percent of the balance of the loan on the date of the transfer of the property.

"(c) A fee may not be collected under this section from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse of any veteran (including a person who died in the active military, naval, or air service) who died from a service-connected disability.".

(c) LIABILITY.—Section 1803 of such title is amended by adding at the end the following:

"(e) Any veteran who pays a fee under section 1829 of this title, or is exempted under section 1829(c) from paying such fee, on or after the effective date of the Veterans' Home Loan Mortgage Indemnity Act of 1989 with respect to a housing loan (other than a loan made under section 1833(a) or a loan for which a fee is collected under section 1829(b)) shall have no liability to the Secretary with respect to the loan for any loss resulting from any default of the veteran except in the case of fraud, misrepresentation, or bad faith by the veteran in obtaining the loan or in connection with the loan default.".

(d) CONFORMING AMENDMENTS.—(1) Section 1824 of such title is amended—

(A) in subsection (b), by inserting the following before the period at the end of the first sentence: "and the operations carried out with the Indemnity Fund established by section 1824A"; and

(B) in subsection (c)—

(i) by inserting after "title" in clause (2) the following: "before the effective date of the Veterans' Home Loan Mortgage Indemnity Act of 1989, except that fees collected under subsection (b) of such section 1829 on or after such effective date with respect to loans which were originally guaranteed, made, or insured before such effective date shall also be deposited in the Fund"; and

(ii) by inserting after "chapter" in clause (3) the following: "with respect to housing loans guaranteed or insured under this chapter before the effective date of the Veterans' Home Loan Mortgage Indemnity Act of 1989".

(2) Section 1832(a)(1) of such title is amended by striking out "If" in the last sentence and inserting in lieu thereof "Except as provided in section 1803(e), if".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to any loan closed on or after October 1, 1989.

SEC. 3. SALE OF VENDEE LOANS.

(a) IN GENERAL.—Section 1833(a)(3) of title 38, United States Code, is amended to read as follows:

"(3)(A) The Secretary may sell any note evidencing such a loan with or without recourse, but only if the cash proceeds received at the time of such sale is equal to an amount which is not less than 90 percent of the unpaid balance of such loan.

"(B) All amounts received from the sale of such loans shall be credited, without any reduction and for the fiscal year in which the amount is received, as offsetting collections of the Fund, established by section 1824 or by section 1824A, for which a fee was collected (or from which a fee was exempted from being collected) at the time the loan was originally guaranteed. The total credited to such Fund for a fiscal year shall offset outlays attributed to such Fund during such fiscal year.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1989.

SEC. 4. COMPUTATION OF ENTITLEMENT AMOUNT.

Section 1802(b) of title 38, United States Code, is amended—

(1) by striking out "or" at the end of clause (1)(B);

(2) by striking out the period at the end of clause (2) and inserting in lieu thereof "; or"; and

(3) by inserting after clause (2) the following new clause:

"(3) the loan has been repaid in full.".

SEC. 5. WAIVER.

Subsection (c) of section 3102 of title 38, United States Code, is amended—

(1) by striking out ", misrepresentation, material fault, or lack of good faith"; and

(2) by adding at the end the following new sentence: "The Secretary may not make a determination with respect to equity and good conscience under subsection (b) solely on the basis of a balancing of fault or on whether the veteran might be able to repay the indebtedness.".

SEC. 6. COMPUTATION OF COSTS; EXTENSION.

(a) Costs.—Section 1832(c)(1)(C)(ii) of title 38, United States Code, is amended by inserting before the period the following: ", excluding any estimated imputed interest costs of funds to the Government".

(b) EXTENSION.—Section 1832(c)(11) of such title is amended by striking out "October 1, 1989" and inserting in lieu thereof "October 1, 1991".

SEC. 7. NOTIFICATION REQUIREMENT.

Section 1832(a) of title 38, United States Code, is amended by adding at the end the following:

"(5) In the event of default in the payment of any loan made, guaranteed, or insured under this chapter in which a partial payment has been tendered by the veteran concerned and refused by the holder, the holder of the obligation shall notify the Secretary as soon as such payment has been refused. Such notification shall include a statement of the circumstances of the default and the reasons for the holder's refusal.".

Passed the House of Representatives June 6, 1989.

Attest: DONNALD K. ANDERSON,

Clerk.

Opening Statement
Senator Alan Cranston
Chairman
Committee on Veterans' Affairs
Hearing on
Agent Orange (S. 1153), Home Loan Guaranty (S. 404, S. 898, S. 1158, & H.R. 1415), and Health-Care Facility (Sec. 221 of S. 13) Legislation and Oversight

June 22, 1989

Good morning. Welcome to today's hearing on Agent Orange compensation legislation and legislation and oversight relating to the VA home loan guaranty program and security at VA health-care facilities. I am very grateful to those of you who are testifying and providing us with your views on the important matters we will consider today.

S. 1153, THE PROPOSED "VETERANS' AGENT ORANGE EXPOSURE AND VIETNAM SERVICE BENEFITS ACT OF 1989"

The first item on today's agenda is S. 1153, legislation I introduced on June 8 along with my good friends, Senators Daschle and Kerry, who have taken such a major leadership role on this issue. We were joined by a bipartisan group of five other members of this Committee -- Senators Matsunaga, DeConcini, Rockefeller, Specter, and Jeffords -- and a bipartisan group of fourteen other Senators. This bill is a good, solid measure that, if enacted, will be of great assistance to many Vietnam veterans and their families. It is noteworthy that there is very substantial consensus among the service organizations in general support of the bill, with a spectrum of views represented from those who think the bill goes too far, or a little too far to those who believe it does not go far enough. That suggests to me that we are clearly on the right track.

S. 1153, which is derived from very similar to legislation passed by the Senate last October during consideration of S. 2011, would provide benefit payments to certain veterans who may have been exposed to Agent Orange during their service in Vietnam. Senators Daschle and Kerry and I have worked together very closely and cooperatively since last Congress to reach an agreement on a bill for this Congress on this very complex issue, and I am delighted that we have succeeded in doing so.

Agent Orange Background: The legislation passed by the Senate last October 18 -- the Daschle-Kerry-Cranston amendment (No. 3681) -- would have provided a comprehensive package of health care, benefit payments, and scientific review provisions to assist Vietnam veterans in ways that were reasonably related to current scientific knowledge in order to address the concerns about their exposure to Agent Orange. Despite the overwhelming Senate support for that Agent Orange legislation, the House of Representatives refused to accept all but a few provisions. The final version of the bill enacted as Public Law 100-687 on November 18 contained only five, relatively minor Agent Orange provisions from the Senate-passed bill.

It was in keeping with our promise made last year to continue our quest in this Congress to address appropriately the ongoing concerns of Vietnam veterans about Agent Orange and other herbicides during their service in Vietnam that Senators Daschle, Kerry, and I worked to produce S. 1153 as an updated version of the Senate-passed legislation.

S. 1153 Provisions: S. 1153 contains ten substantive provisions which would:

- Provide interim (from October 1, 1989, to April 15, 1992) disability benefits for Vietnam veterans with non-Hodgkins lymphoma (NHL) or soft-tissue sarcoma (STS) (and survivors' benefits for deaths from either condition); and provide a mechanism for votes in both Houses after January 1, 1992, but prior to the expiration date of these interim benefits to extend them or make them permanent.

o Create a mechanism pursuant to which VA must determine, based on an initial independent scientific review (as updated by biennial follow-up reviews) of all relevant evidence and on all other available scientific information, whether permanent presumptions of service connection for disability benefits should be established for NHL, STS, or any other diseases determined to have positive association with exposure to Agent Orange or other herbicides in Vietnam; and provide that the National Academy of Sciences (NAS) would conduct this scientific review (unless NAS declines in which case another independent scientific entity would do so).

o Establish a permanent presumption for disability benefits of service connection for chloracne in Vietnam veterans when the disease became manifest witnin one year of Vietnam service.

o Require VA to gather, analyze, and report annually to the two Veterans' Affairs Committees on data gathered from the records of Vietnam veterans who seek VA treatment for conditions they believe are related to exposure to Agent Orange or other herbicides in Vietnam.

o Require VA to establish an archiving system to store voluntarily contributed blood and tissue samples from Vietnam veterans for use in future research.

o Require VA to fund appropriate, independent studies which would be designed to determine whether or not future scientific research is feasible on diseases or disabilities which may be related to exposure to Agent Orange or other herbicides or to health hazards related to Vietnam service; and provide for consultation in assessing the appropriateness of such studies with NAS.

o Require HHS to submit a report, within 180 days of enactment, on research being conducted to identify and develop treatments for exposure to dioxin and other toxic agents similar to those in herbicides used in Vietnam.

o Extend for three and a half years (from September 30, 1990, to December 31, 1993) veterans entitlement to/eligibility for VA care based on exposure to Agent Orange or radiation.

o Make technical changes in the recently-enacted provisions establishing VA outreach requirements relating to Agent Orange and reporting by the Air Force on its Ranch Hand Study.

Interim Benefits, Independent Scientific Review and Health-Care Benefits: There are three major provisions in this legislation. The first would, as noted, provide for an interim temporary presumption for the payment of VA benefits for Vietnam veterans suffering from non-Hodgkins lymphoma or soft tissue sarcoma. These benefits would be paid from October 1, 1989, until April 15, 1992, and the bill includes a mechanism -- derived from the DoD Base Closure legislation, Public Law 100-526 -- whereby a vote to extend the interim benefits would be ensured in each House if desired by any member prior to the expiration of these benefits.

The decision to provide interim, temporary benefits would be reevaluated once the results of the Selected Cancers Study (SCS) -- which is being carried out by the Centers for Disease Control (CDC) -- are available and evaluated. At this time, CDC estimates the final results of this study will be available by the end of March next year.

The second major provision would establish procedures for the NAS -- or, if it declines, another appropriate, independent scientific body -- to evaluate the results of the SCS and all other appropriate scientific studies and information regarding the health effects of veterans' service and exposure in Vietnam to dioxin or other toxic agents contained in herbicides used there. That evaluation would be submitted to the Secretary and the two Veterans' Affairs Committees within one year after enactment, or 60 days after the CDC study report is available to NAS (or other appropriate scientific body) if that date is later. On the basis of that evaluation and any other appropriate, available scientific evidence, the Secretary would have to determine whether or not positive association exists between exposure to toxic agents in Vietnam and NHL, STS, or any other disease and, if so, the Secretary would have to establish presumptions of service connection for any diseases so determined.

The bill would provide a mandatory timetable for the Secretary's determinations and for publication of interim and final regulations, as appropriate, so that presumptive, permanent benefits would be provided on a prompt and timely basis when there is adequate scientific evidence to support them. In addition, the bill calls for periodic further surveys and evaluations, of the scientific literature by NAS (or another independent scientific entity) with follow-up reports to the Secretary on the outcome of those surveys and evaluations and then would establish a timetable for follow-up actions by the Secretary, including reports to Congress and amendments to the regulations if appropriate.

The third major provision of S. 1153 would extend, from September 30, 1990, to December 31, 1993, Vietnam veterans' entitlement to/eligibility for VA care based on the probability of exposure to Agent Orange. We provided that this access to health care in 1981 to ensure that, while Congress was working to find a resolution to the overall Agent Orange issue, veterans in need of health care for conditions that might be related to their Vietnam service would be able to turn to VA for such assistance. The extension proposed in this bill is intended to continue to give Vietnam veterans peace of mind on this score.

Reasons for Action: For over 11 years I have been working to resolve the concerns raised about the possible adverse health effects arising from veterans' exposure to Agent Orange or service in Vietnam. As either the Chairman or Ranking Democratic member of the Veterans' Affairs Committee during this time, I have participated in numerous hearings and discussions on this issue, and I am proud to have authored or co-authored in the Senate various laws designed to provide solutions to the Agent Orange dilemma in the areas of health-care eligibility, epidemiological studies, and public rulemaking and adjudication standards regarding benefits claims.

The questions raised by the Agent Orange issue, while emotional and controversial, are scientific in nature and require scientific analysis and answers. I believe that we owe it to our Vietnam veterans to search for meaningful answers -- not just for the purposes of providing compensation but so that we can know the full extent of any threat which may exist to their health. Accordingly, a major focus of my efforts and those of both Committees on Veterans' Affairs has been on research which might eventually lead to greater understanding of the health effects of Agent Orange exposure.

Unfortunately, we do not yet have a definitive scientific answer as to whether there is an association between NHL and STS -- or any disease other than chloracne, for that matter -- and service in Vietnam. If we did, things would be a lot easier.

Instead, we face a simple dilemma -- do we tell Vietnam veterans that they have to wait until a definitive answer is available, which we hope will be provided in early 1990 by the SCS, or do we believe that there is enough suggestive evidence to justify taking action now?

I do not believe we can ignore the accumulation of suggestive associations found between certain conditions and Vietnam service or certain herbicide exposure. I believe that, taken together, certain findings in various studies, which I discussed in detail in my two floor statements concerning the passage of this legislation last Congress (beginning on page S16540 in the October 18 Congressional Record and page S16977 in the October 20 Congressional Record), represent enough reasonable suspicion so that, in fairness to these veterans, we ought to provide benefits now consistent with our historic obligation to give veterans the benefit of reasonable doubt.

Before I close on this issue, I want to highlight the vital, very important role that VA Secretary Ed Derwinski has played in our efforts to address this matter. His decision not to appeal a district court decision invalidating certain restrictive aspects of VA regulations dealing with Agent Orange exposure was a most refreshing change from prior VA responses to Agent Orange matters. I congratulate the Secretary and our VA witness, Deputy Secretary Tony Principi, for this very forthcoming action. I am confident that his support will be most helpful as we move forward in the legislative process with this bill.

It has been a long, hard struggle to help ensure that serving our Nation in an unpopular war did not unfairly prevent Vietnam veterans from receiving all of the help they deserve. Too many Vietnam veterans and their families have suffered anguish for far too long because of concern over the effects of exposure to Agent Orange and other herbicides. I recognize the frustrations that many individuals have experienced in working to resolve this difficult, intensely felt, vitally important issue. I am proud to have worked with so many of my colleagues in this fight over so many years and look forward to bringing this legislation before the Committee at our mark-up next month on July 13 and then to the Senate floor shortly thereafter.

S. 1158, THE PROPOSED "VETERANS HOME LOAN GUARANTY RESTRUCTURING AND SOLVENCY ACT OF 1989"

Today's hearing also will consider several bills that would modify the VA home loan guaranty program. S. 1158, which I introduced on June 9, 1989, would restructure the home loan guaranty program to create a solvent and equitable program that would better serve the interests of our Nation's veterans to VA. S. 1158 in many respects parallels H.R. 1415, a bill which was passed by the House on June 6, 1989, and on which we are also receiving testimony today. S. 404, which I introduced on February 9, 1989, would extend the 1-percent loan guaranty fee and the so-called "no-bid" formula, which VA uses to decide whether to purchase a foreclosed property or pay its guaranty, for two years, through September 30, 1991. Finally, we have before us S. 898, VA's home loan legislative proposal, I introduced at the request of the Administration on May 2, 1989.

At this point, I would like to highlight the provisions of S. 1158, the proposed "Veterans Home Loan Guaranty Restructuring and Solvency Act of 1989," these provisions are discussed in greater detail in my floor statement of June 13, 1989, (beginning on page S6526 in the June 13 Congressional Record). S. 1158 would restructure and improve the present Department of Veterans Affairs loan guaranty system.

Home Loan Program Background: Since its inception in 1944, the VA home loan guaranty program has guaranteed loans totaling more than $300 billion and helped more than 13 million veterans to purchase homes. With a VA guaranty, a veteran now can obtain a mortgage with a term of up to 30 years and an interest rate no greater than the maximum set by the Secretary and adjusted periodically to meet the demands of the loan market.

Traditionally, the vast majority of VA-guaranteed loans have cost the government little to guarantee and have provided significant benefits to veterans and to society because veterans generally have proven good credit risks. From its inception in 1944 until 1961, the home loan guaranty program required appropriations of just $730 million to VA's readjustment benefits account. That's an average of $49.9 million a year for the 5.6 million loans made during those 17 years.

More recently, however, the downturn in certain parts of the economy and higher default and foreclosure rates, including those for loans guaranteed by VA, have threatened the viability of the program. As a result, the program has incurred significant deficits, requiring increasing appropriations to keep if solvent. In FY 1989 alone, the Loan Guaranty Revolving Fund (LGRF) has received $658 million in appropriations and VA has requested -- and both Houses have passed in H.R. 2074, the FY 1989 Dire Emergency Supplemental Appropriations Act -- $120 million more is pending in the supplemental appropriations bill.

I have stated repeatedly that it is not realistic to expect a benefits program to incur no costs. But when the cost of such a program continues to increase rapidly, we must take a closer look to determine the reasons for the sharp increase and we must take steps to minimize program costs in light of the towering Federal deficit. That should not mean changing the fundamental nature of the loan guaranty program, however, either by drastically curtailing it or by insisting that it must be paid for in full by those seeking to use it. The goal should be to make improvements in the VA home loan program that would enhance its value to veterans, maintain its solvency, and reduce its dependence on taxpayers' funds -- all without compromising basic program goals.

It was with these thoughts and this goal in mind and against background that I introduced S. 1158. It is substantially similar to H.R. 1415, which was introduced in the House on March 15, 1989, by Representative Harley Staggers, who chairs the House Veterans' Affairs Subcommittee on Housing and Memorial Affairs, reported by the House Veterans' Affairs Committee on June 1, 1989, and passed by the full House on June 6, 1989. The House bill is derived directly from H.R. 5221, a bill authored by Representative Marcy Kaptur in the 100th Congress and passed by the House late last year.

I believe that S. 1158 would improve in certain respects upon the excellent groundwork laid by the other body in H.R. 1415.

Comparison to H.R. 1415: Many provisions of H.R. 1415, as passed by the House, are included, with revisions in some cases, in S. 1158, as follows:

-- H.R. 1415 would establish a new revolving fund to finance the loan guaranty program with respect to loans made after September 30, 1989. S. 1158 titles the fund the "Home Loan Guaranty Fund" while the House bill calls it the "Veterans Mortgage Indemnity Fund".

-- H.R. 1415 would release veterans, but not assumptors, from liability to VA in the event of foreclosure on a VA-guaranteed loan, except in cases of fraud, misrepresentation, or bad faith. S. 1158 releases both assumptors and veterans from liability but adds an additional exception for cases in which the default is not for reasons beyond the veteran's or assumptor's control.

-- H.R. 1415 generally would increase the current loan fee from 1 percent to 1.25 percent but decrease to 0.75 percent for veterans making a downpayment of 5 percent or more. S. 1158 would add a further half-percentage-point decrease for downpayments of 10 percent or more.

-- Both bills would require the federal government to pay the new fund from the Treasury 0.25 percent of the loan amount for the the fiscal year in which the loan is guaranteed and for each of the next two years.

-- Both bills would require the Secretary of the Treasury to invest surplus amounts from the new fund in government securities.

-- Both bills would continue the current 1-percent fee for vendee loans.

would increase the current half-percent fee for assumed loans to two-thirds of a percent and provide indemnity for assumptors.

-- Both bills would require that loan asset sales both with and without recourse be scored as offsetting collections of the fund in which the original loan fee was deposited.

-- Both bills would extend VA's "no-bid" formula until October 1, 1991.

-- Both bills would limit the extent to which VA could include the government's cost of borrowing in "net value" determinations for purposes of the "no-bid" formula. The House bill would prohibit any use of a cost-of-funds factor, while S. 1158 would permit the cost of borrowing to be included but only to the extent of the interest costs of one-half the difference between the amount VA would have to pay to acquire a property and the amount VA would have to pay on its guaranty.

-- Both bills also would require that a lender immediately notify VA of its refusal of a veteran's offer of partial payment and the reasons for the refusal.

Four substantive provisions of S. 1158 have no parallel in H.R. 1415: the first would require the government to pay the loan fee for disabled veterans and surviving spouses who are exempt from paying the fee; the second would allow veterans to purchase up to $10,000 of additional entitlement under certain circumstances in connection with a particular loan; the third would authorize the Secretary to make a small upward adjustment in loan fees where determined necessary (after an independent validation by the Congressional Budget Office) to maintain the solvency of the new revolving fund; and the fourth would increase the current half-percent fee for assumed loans to two-thirds of a percent and provide indemnity for assumptors.

S. 404, THE PROPOSED EXTENSION OF CERTAIN VA HOME LOAN GUARANTY PROGRAM PROVISIONS

On February 9, 1989, I introduced S. 404 with the Ranking Minority Member of the Committee, Senator Murkowski, to extend for two years, to September 1991, the current 1-percent fee for VA-guaranteed loans and the current "no-bid" formula. This legislation, limited to a one-year extension, will be essentially what I propose that our Committee report to the Budget Committee as our reconciliation recommendations.

S. 898, THE PROPOSED "VETERANS' HOUSING AMENDMENTS ACT OF 1989"

On May 2, 1989, I introduced S. 898 at the request of the Administration. This bill would expand the circumstances under which veterans may obtain VA-guaranteed refinancing loans for the full value of the property; permanently allow sales of vendee loans with or without recourse and eliminate the current reporting requirements for nonrecourse sales; extend for two years, through September 30, 1991, the current 1-percent fee for VA-guaranteed loans and vendee loans; eliminate or cut back certain home-site standards and inspection requirements for manufactured housing purchased with VA-guaranteed loans; repeal the requirement for local official's statement regarding water and sewerage systems as a condition of the VA guaranteeing loans for the purchase of certain new homes; expand VA's authority to offset federal tax refunds for debts arising from the VA loan guaranty program; limit the time allowed for a veteran to request waiver of a home-loan debt to VA; make a technical amendment that would ensure that certain active-duty service members qualify for VA-guaranteed home loans; and make the "no-bid" formula provisions permanent.

I am very interested in the witnesses testimony this morning on all three measures, and we have found the prepared statements generally very helpful and informative.

HEALTH-CARE FACILITY SECURITY

Section 221 of S. 13: This provision would (a) assign to an Assistant Secretary of Veterans Affairs responsibility for the functional and technical supervision in Central Office of the performance of VA security and law enforcement functions in the field; and (b) require the Secretary, within 90 days after enactment, to submit a report containing a plan for upgrading VA police officer training, recruitment, and salaries and assessments of the need for a policy to allow VA police officers serving at medical centers in high crime areas to carry weapons for self-protection and of the feasibility of reducing police services in centers with no significant security problems in order to expand such services in centers with greater problems.

These matters were originally scheduled to be considered at our June 14 hearing, but were postponed when I found the written testimony for that hearing to be most cursory and superficial with respect to the security issue. As a result, I submitted to VA Deputy Secretary Tony

Principi last Wednesday a request for specific and comprehensive information on a wide range of security-related topics, to be provided in advance of, and for discussion at, today's hearing. In addition to allowing VA additional time to respond more thoroughly on the security question, postponing the Committee's consideration of this issue also allows us to address concerns about VA security directly with VA top management. I believe Tony Principi shares many of these concerns.

I want to say a special word of thanks to the VA officials who worked so long and hard to prepare answers to the 67 security questions we presented last week and to get those responses to us on Tuesday.

The Committee will this morning also hear from three VA medical center security chiefs who will be testifying under oath in response to questions and providing their views on the problems confronting the VA security service and possible solutions to these problems.

CONCLUSION

We have a number of very important issues of vital importance to our Nation's veterans to cover this morning. I am looking forward to hearing the testimony of each of our witnesses on these issues. Also, we have received or will receive written statements for the record from the First Boston Corporation, the National Association of Realtors, the Government National Mortgage Association, the Office of Technology Assessment, the Centers for Disease Control, the Surgeon General of the Air Force and the National Academy of Sciences. We will also be receiving written testimony from some of today's witnesses on other bills pending before the Committee.

I want to thank the witnesses for getting their prepared testimony to us on such a timely basis, including the VA, and express my appreciation to many of the witnesses for their support of the various bills I have authored or coauthored that are before the Committee today, and for their suggestions for improvements in certain cases.

STATEMENT OF
SENATOR FRANK H. MURKOWSKI (R - AK)
AT THE HEARING OF THE COMMITTEE OF VETERANS' AFFAIRS CONSIDERING LEGISLATION RELATING TO AGENT ORANGE, THE HOME LOAN GUARANTY PROGRAM, AND VA SECURITY SERVICE.

Good Morning,

This morning we will consider a wide range of issues. Some might argue that the questions before the Committee this morning are unrelated. However, they ARE joined by a common and very significant thread. These issues, Agent Orange, veterans' housing, and VA's security service are ALL important to veterans.

The environment within which the Congress responds to the possible health effects of herbicides has changed dramatically in the last year.

- A year ago one could argue that VA was unconcerned and unresponsive. Secretary Derwinski's bold and forceful actions provide dramatic evidence that times have changed. "That was then, and this is now".
- A year ago we knew we faced a long delay before the Centers for Disease Control Selected Cancer Study would become available. We are now within months of that study's release.

Clearly the Committee's actions must take this changed environment into account. The Committee must applaud, and respond to, VA's willingness to cast aside the burdens of precedent to reconsider the questions raised by Agent Orange.

For many veterans, a home is a concern second only to health. For forty-five years the Congress has relied on the home loan program to assist veterans on the road to homeownership. The program's success is undeniable. Unfortunately the program's problems are also undeniable.

IN CONSIDERING LEGISLATION INTENDED TO RESTORE THE PROGRAM TO HEALTH, I URGE THE COMMITTEE AND OUR WITNESSES TO FOCUS ON TWO ISSUES:

- o WHAT IS THE BASIC PURPOSE OF THE PROGRAM?
  - - DO PROPOSED CHANGES PROTECT OR RESTORE THAT PURPOSE?
  - - DO ANY PROPOSED CHANGES DETRACT FROM THAT PURPOSE?
- o WHAT CONDITIONS IMPAIR VA'S ABILITY TO FULFILL THAT BASIC PURPOSE OR UNNECESSARILY INCREASE THE COST OF THE PROGRAM?
  - - DO PROPOSED CHANGES CORRECT THOSE CONDITIONS?
  - - DO PROPOSED CHANGES UNNECESSARILY INCREASE THE COST OR RISK OF THE PROGRAM?

I SUBMIT THAT THE BASIC PURPOSE OF THE PROGRAM IS TO ASSIST VETERANS IN OBTAINING A HOME.

- o ALL OTHER GOALS MUST BE SUBORDINATE TO THAT PURPOSE.
- o LEGISLATIVE PROPOSALS MUST BE MEASURED AGAINST THAT PURPOSE.

I ALSO BELIEVE THAT, WHILE VA HAS TAKEN ADMIRABLE STEPS TO IMPROVE THE MANAGEMENT OF THE PROGRAM, THERE IS MORE TO BE DONE. FOOTBALL GAMES ARE WON WITH THE BASIC SKILLS OF BLOCKING AND RUNNING. SIMILARLY, VETERANS' HOUSING WILL BE PROVIDED THROUGH THE BASIC SKILLS OF UNDERWRITING, APPRAISAL, LOAN PROCESSING, PROPERTY MANAGEMENT AND PROPERTY SALES.

ONE WAY TO ENSURE THAT EVERYONE FOCUSES ON THESE CRITICAL SKILLS IS BY ENSURING THAT ALL PARTIES WHO BENEFIT FROM THE PROGRAM SHARE IN THE RISKS OF THE PROGRAM. WHEN PROGRAM PARTICIPANTS CAN COUNT ON UNCLE SAM TO PAY ALL THE COSTS OF ECONOMIC DECISIONS, EXPERIENCE HAS SHOWN THAT THOSE DECISIONS WILL NOT BE MADE WITH THE DEGREE OF CARE NECESSARY FOR THE PROGRAM TO SURVIVE.

VETERANS AND THE HEALTH CARE PROFESSIONALS THAT SERVE THEM MUST BE CONFIDENT OF THEIR SECURITY WHILE THEY ARE IN VA FACILITIES. I LOOK FORWARD TO THE TESTIMONY OF OUR WITNESSES ON VA SECURITY WITH THE SAME DEGREE OF INTEREST I HOLD FOR THE OTHER TOPICS OF OUR HEARING.

STATEMENT OF SENATOR FRANK H. MURKOWSKI
FORTY FIFTH ANNIVERSARY OF THE GI BILL

MR. CHAIRMAN,

THIS MORNING'S HEARING COMMEMORATES ONE OF THE MOST SIGNIFICANT DAYS IN THE HISTORY OF VETERANS' BENEFITS. MOST OF THE BENEFITS VETERANS ENJOY TODAY CAN TRACE THEIR ROOTS TO THE "GI BILL OF RIGHTS" SIGNED INTO LAW BY FRANKLIN D. ROOSEVELT ON THIS DAY FORTY FIVE YEARS AGO.

THAT FAR SIGHTED LEGISLATION ESTABLISHED THE VETERANS' EDUCATION AND HOME LOAN PROGRAMS. THESE PROGRAMS HAVE PROFOUNDLY CHANGED THE FACE OF OUR SOCIETY.

PRIOR TO WORLD WAR TWO HIGHER EDUCATION AND HOMEOWNERSHIP WERE LIMITED TO A RELATIVELY SMALL SEGMENT OF OUR ECONOMY. THE GI BILL PROVIDED THE MEANS FOR MILLIONS OF VETERANS, AND THEIR FAMILIES, TO ENJOY THE MATERIAL FRUITS OF THEIR VICTORY, AS WELL AS THE FREEDOM THEIR SERVICE PRESERVED. THE ONLY LEGISLATION I CAN THINK OF WITH COMPARABLE IMPACT ON THE NATION IS THE HOMESTEAD ACT OF 1862.

THIS ANNIVERSARY REMINDS US OF THE FOOTPRINTS THIS COMMITTEE, THE DEPARTMENT OF VETERANS AFFAIRS, AND THE NATION MUST STRIVE TO FILL. THE GI BILL OF RIGHTS WAS THE FIRST INSTALLMENT ON THE DEBT THAT CAN NEVER BE FULLY REPAID.

STATEMENT OF

SENATOR JAMES M. JEFFORDS

JUNE 22, 1989

Mr. Chairman: Thank you for calling this hearing together today. I am particularly pleased that among one of the topics of this hearing is compensation for veterans exposed to Agent Orange who have developed life threatening diseases. This issue has been a concern of mine for quite some time and I am pleased to be a cosponsor of a bill which redresses this injustice.

The Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989 would provide interim disability benefits for Vietnam Veterans suffering from non-Hodgkins lymphoma and soft-tissue sarcoma, and would provide survivors benefits for their spouses through April 15, 1992. The bill would further provide that in 1992 the House and Senate vote to extend or make permanent these benefits.

Veterans have been trying for years to get Congress to acknowledge service connected medical problems due to exposure to Agent Orange during the Vietnam War. I applaud Secretary Derwinski for his recent ruling to allow Agent Orange victims to re-open claims for benefits. This action paves the way for legislative measures - it is high time that we take our cue and pass a bill that takes responsibility for our government's action in Vietnam. Passage of this important legislation is a start towards settling a score long overdue.

STATEMENT AT HEARINGS ON HOME LOAN AND AGENT ORANGE LEGISLATION

BY SENATOR SPARK M. MATSUNAGA
Senate Veterans' Affairs Committee
8:00am, Thursday, June 22, 1989
SR-418

Thank you for this opportunity to make a few opening remarks, Mr. Chairman.

At the outset, allow me to extend my own welcome to the distinguished VA officials, vets service organization representatives, and others who are here to testify on various legislation relating to home loans, security, and Agent Orange.

Mr. Chairman, I look forward to comments on the several home loan bills on the agenda today. I think that your bill, S. 1158, in particular, which among other things calls for the restructuring of the current loan guaranty system by establishing a new revolving fund, would make important and necessary changes in the way the current programs are operated. This measure once again demonstrates the leadership role you have taken in making it easier for veterans to achieve the American dream of home ownership.

Concerning other home loan legislation, I would like to thank you for agreeing to consider a measure I introduced on June 7th that would explore the possibility of extending direct home loans to veterans who reside on reservations or other trust-type lands. Because of the nature of the land title, such veterans find it almost impossible to obtain VA-guaranteed commercial loans. My bill, S. 1146, would establish a 3-year pilot project to examine the feasibility of providing these veterans with direct VA home loans. I understand that the Committee will be soliciting supplementary, written comments on this legislation. I look forward to reviewing them, and wish to make clear that I stand ready to work with members of the Committee, the VA, and the vets service organizations in making any necessary improvements to the bill.

Regarding the other major issue to be discussed today, Agent Orange compensation, I am pleased to say that I am an original cosponsor of legislation that would provide interim disability benefits for Vietnam veterans who may have been exposed to the herbicide and who now suffer from non-Hodgkin's lymphoma or soft-tissue sarcoma. S. 1153 is very similar to legislation the Senate approved last year. Given Secretary Derwinski's commendable decision not to appeal the recent federal District Court ruling ordering the VA to rewrite regulations governing claims for Agent Orange exposure, it is clear that the time has come for Congress to act decisively on this matter. I would like to recognize the magnificent effort Chairman Cranston and Senators Daschle and Kerry have made in working out a fair and acceptable bill. Through their perseverence, S. 1153 reflects both the latest scientific knowledge and our legal and moral requirement to give veterans the benefit of the doubt in claims cases.

Thank you for this opportunity to present these remarks, Mr. Chairman.

STATEMENT OF
ANTHONY J. PRINCIPI
DEPUTY SECRETARY
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
JUNE 22, 1989

Mr. Chairman and Members of the Committee:

It is a pleasure to appear before this Committee today and present the views of the Department of Veterans Affairs (VA) on legislation affecting the loan guaranty program, in response to concerns about the health consequences of veteran's exposure to herbicides used in Vietnam and concerns expressed regarding the structure and operation of VA Security Services.

First, I will discuss S. 1158, the "Veterans Home Loan Guaranty Restructuring and Solvency Act of 1989."

VA is well aware that in recent years the costs to the taxpayers of operating the loan guaranty program have been significant. We share your concern, Mr. Chairman, about the future solvency of this program which provides an important benefit to veterans. We, therefore, support the general concept of S. 1158. We have concerns, however, about certain specific provisions of the bill.

Briefly summarized, S. 1158 would:

- Establish a new Home Loan Guaranty Fund to cover expenses for loans guaranteed on or after October 1, 1989. The existing Revolving Fund would cover expenses relating to prior loans.

- Revise the funding fee. For most veterans, the fee would increase from 1 percent to 1 1/4 percent, but the fee would decrease for veterans making substantial down payments. Loan assumers would pay 2/3 of 1 percent (up from 1/2 of 1 percent).

- Require the Government to pay 1/4 of one percent for the first 3 years for each loan guaranteeed. The Government would also be required to pay the fee that would have been paid by disabled veterans and surviving spouses who are exempt from the fee.

- Provide, in most cases, that veterans obtaining loans after September 30, 1989, would have no liability to VA following foreclosure.

- Extend for 1 year the current provisions of law relating to the sale of vendee loans.

- Require all sales of vendee loans, whether with or without recourse, to be credited as offsetting collections without reduction.

- Permit veterans to purchase up to $10,000 in additional entitlement if the resulting total of guaranty plus down payment did not exceed 25 percent of the loan amount.

- Require loan holders to notify VA if they refuse to accept a partial payment.

- Revise the "net value" calculation to include 50 percent of Government's cost of borrowing the difference between total indebtedness and the guaranty amount.

- Extend the use of the claims computation and property acquisition formulas in current law for 2 years, from October 1, 1989, to October 1, 1991.

We support the overall concept of the new Guaranty Fund. While we generally support the revised fee structure for veterans contained in the bill, we believe a threshold should be established for exempting disabled veterans from paying the fee. A similar bill passed the House of Representatives in the previous Congress. Under that bill only those veterans whose disability was rated at not less than 30 percent would be exempt from payment of the fee. VA urges adoption of that provision. We are not proposing any change to the exemption for surviving spouses.

We also oppose requiring the Government to pay the funding fee that would have been paid by those exempt.

With regard to release of liability, we recognize that many times the foreclosure was due to conditions beyond the control of the veteran and it will be difficult, if not impossible, for any repayment of a debt. We, therefore, support the release of liability proposed in the bill.

We agree with S. 1158 that veterans should remain liable in case of fraud, material fault, misrepresentation, or bad faith. We have a technical concern, Mr. Chairman, with the language currently contained in section 2(c) of the bill which would allow liability to be established: (1) if there was fraud, misrepresentation, or bad faith on the part of the veteran; and (2) if the default resulted from circumstances not beyond the veteran's control. It is not clear if both circumstances would have to take place in order to establish a veteran's liability. We believe the two criteria should be separate since there may be instances in which the cause of the actual default would appear to be beyond the veteran's control, but the veteran did commit fraud, misrepresentation, or bad faith in the origination of the loan. In such a case, we believe that VA should be able to establish liability against that veteran.

We support paragraphs 1 through 3 of section 3(a) of the bill which would extend for 1 year the current provisions of the law relating to the sale of vendee loans. We would prefer, however, that the Committee adopt the vendee loan sale provisions contained in S. 898 which would permanently remove the prohibition against selling vendee loans without recourse. I will discuss these provisions later in my testimony.

Paragraph 4 of section 3(a) of the bill would require all loans sold, whether with or without recourse, to be credited as offsetting collections of the loan funds without reduction. VA opposes this provision.

When loans are sold with recourse, the Government has an obligation to repurchase the loan in the event of default. Accordingly, established budget scorekeeping conventions recognize that the proceeds from such sales are a means of financing outlays, like borrowing, not an offset to outlays. Treating proceeds from sales with recourse as collections misstates the true cost of the transaction to the Government. Therefore, this provision is contrary to sound fiscal management, and violates the basic premise of the Administration's loan asset sales program.

Concerning the new permanent budget authority created in S. 1158, by requiring a Government matching contribution to the new Fund, we believe this concept should be considered in the larger scope of the Administration's credit reform proposal which would provide appropriations for subsidy amounts without limiting VA's ability to guarantee loans.

Since, Mr. Chairman, S. 1158 does not specify a funding source for this Government contribution, it would appear to create permanent budget authority; i.e., a permanent mandatory stream of Federal obligations not subject to the annual appropriations process. In the alternative, the requirement for a Government contribution may establish a loan guaranty ceiling. In the absence of sufficient appropriations, VA may be unable to guarantee new loans unless sufficient funds were available to make the current year's contribution.

We oppose allowing veterans to purchase additional entitlement. If enacted, this section would increase the Government's exposure on certain loans to as much as $46,000. Currently, the maximum guaranty is $36,000. In view of the large losses sustained by VA in recent years in this program, and the overall Federal budget deficit, we must oppose any increase in the guaranty at this time.

It is our understanding that this provision is designed to assist those veterans living in high cost areas. However, veterans in those areas would have to make substantial down payments in most cases. Most lenders making VA loans sell those loans in the secondary market through GNMA (Government National Mortgage Association) pools. GNMA's current maximum loan amount for pooled loans is $144,000 or four times the present maximum VA guaranty of $36,000. Unless GNMA raised their loan limit, most lenders would still not make VA loans of above $144,000, and veterans in high costs areas would have to make down payments to cover the difference between the purchase price of the property and the GNMA maximum loan amount. In order for veterans to benefit from the increased entitlement made available in the new bill, GNMA's loan maximum would need to be raised to at least $184,000 or four times the new potential maximum guaranty amount of $46,000.

Section 5(a) of the bill requires loan holders to notify VA if they refuse to accept a partial payment. We favor this section of the bill.

A VA regulation (38 C.F.R. § 36.4315(b)) currently requires loan holders to accept partial payments under certain circumstances. We expect loan holders to comply fully with that regulation. VA stresses this regulation in its loan servicing efforts, and periodically reminds program participants of the requirements of this provision. This notification requirement will serve as an additional check to insure holder compliance.

In addition, prompt servicing action early in a default is important in trying to reinstate the loan, and save the veteran, the VA, and the loan holder from the adverse consequences of a foreclosure and guaranty payment. Receiving the notification required by the bill would give us early notice of a veteran's default. This would give VA the option of intervening or taking other appropriate action, resources permitting.

Section 5(b) of the bill would revise VA's net value calculation. This section would effectively supersede regulations VA has proposed to take effect August 1, 1989, which would require VA to take into account the full interest cost of funds used to acquire property. In lieu of these proposed regulations, S. 1158 would have VA consider only 50 percent of the cost to the Treasury of borrowing the excess of the total indebtedness over the amount guaranteed.

The Federal Government is presently required to borrow money in the capital markets in order to cover some of its operating expenses. The cost of borrowing these funds is a part of the true cost of running the Government. Therefore, we believe it is reasonable to take interest costs into account in computing "net value." Although S. 1158 considers only half of these costs, and therefore understates the true cost to the Treasury, we prefer this version to the prohibition of recognition of interest costs contained in H.R. 1415. Thus, while we continue to support the proposed regulation, VA believes this amendment represents a reasonable compromise.

In summary, Mr. Chairman, we share your concerns about the loan guaranty program. We appreciate the Committee's efforts to address the concerns through S. 1158, and we would be happy to work with the members of the Committee on resolving our concerns which I have identified.

You have also requested testimony on the measure recently passed by the House, H.R. 1415. Although that bill is similar to S. 1158, it would totally preclude our ability to conduct non-recourse loan sales and change the scoring of proceeds from recourse sales from borrowing to offsetting collections. This change would prevent attainment of reconciliation savings of nearly $500 million as included in the Bipartisan Budget Agreement. H.R. 1415 is also objectionable because it would prevent consideration of the Government's cost of funds in the determination of net value. Therefore, although we object to certain provisions in S. 1158, we prefer it to H.R. 1415.

I will briefly mention certain areas where the two bills are significantly different.

Both bills provide for a reduced funding fee where the veteran makes a 5 percent down payment. S. 1158, but not H.R. 1415, provides a further discount if the veteran makes a 10 percent down payment. Since loans where substantial down payments have been paid are generally regarded as less risky, we have no objection to the Senate provision.

Beginning in FY 1990, H.R. 1415 would permit VA to sell vendee loans only if the sale produced immediate cash proceeds of 90 percent of par. VA opposes that provision. As we testified, we prefer the vendee loan provisions of S. 898.

In addition, H.R. 1415 would revise the criteria for restoration of a veteran's loan guaranty entitlement. Under that bill, entitlement could be restored if the loan has been paid in full, even though the veteran continued to own the property. We would have no objection to that provision if it were limited to interest rate reduction refinancing loans.

H.R. 1415 would also revise provisions of the law relating to waiver of debts to the VA. We oppose those provisions.

Finally, H.R. 1415 would totally prohibit VA from considering interest costs in computing net value. As we have testified, we support the compromise provision regarding interest cost contained in S. 1158, and, therefore, oppose the total prohibition contained in H.R. 1415.

Next I will discuss S. 898, the "Veterans' Housing Amendments Act of 1989." You introduced this bill, Mr. Chairman, at our request. The Department of Veterans Affairs believes the amendments to the housing loan program proposed by this bill would reduce administrative regulation and enhance revenues. We, therefore, urge passage of this measure.

Our letter dated April 17, 1989, which transmitted this bill to the President of the Senate, explains our proposals in great detail. We are recommending that the property acquisition and claim payment provisions contained in section 1832(c) of title 38, United States Code, be made permanent rather than merely extended for 2 years, as proposed in S. 1158.

In addition, we urge that the provisions contained in section 3 of S. 898, relating to the sale of vendee loans, be adopted rather than the loan sale language contained in S. 1158 or H.R. 1415. Section 3 of S. 898 would grant the Secretary flexibility to sell loans in a cost-effective manner, either with or without recourse, without the administrative burdens now contained in the law or proposed by the other bills.

In addition to those matters, S. 898 would:

- Extend the current 1 percent VA loan fee for 2 years; i.e., until September 30, 1991.
- Allow VA to accept any manufactured home that meets Federal construction and safety standards.
- Repeal the requirements that VA inspect manufactured housing plants and sites and set park standards that duplicate local zoning requirements.

- Clarify VA's authority to debar manufacturers who engage in practices unfair or prejudicial to veterans or to the Government.

- Repeal the requirement for a certification regarding public water and sewer systems.

- Expand VA's authority to collect loan guaranty debts by Federal tax refund offset.

- Impose a time limit for waiving loan guaranty debts.

- Waive the 90 percent of value limitation on guaranteed refinancing loans in the following three circumstances:

  1. Construction loans;
  2. Installment land sale contracts; and
  3. Assumed loans at a higher interest rate.

  The maximum amount of these loans would be the lesser of 100 percent of the property's value, or the outstanding balance on the old loan plus closing costs.

In summary, we urge that all of the provisions of S. 898, other than section 4 relating to the loan origination fee, be adopted.

You also requested our comments on S. 404. That measure would extend for 2 years, i.e., until September 30, 1991, two provisions scheduled to expire at the end of the present fiscal year. These are the authority to collect funding fees, and the claim payment and property acquisition provisions currently contained in section 1832(c) of title 38. In the event that the funding fee provisions are not modified as proposed by S. 1158 and H.R. 1415, we would favor the extension proposed by S. 404. As I previously testified, VA favors making the claim payment and property acquisition provisions permanent, rather than merely extending them for 2 years. We note, as a technical matter, that section 2 of S. 404 proposes to amend section 1816(c) of title 38 rather than 1832(c). Section 1816(c) was redesignated as 1832(c) by Public Law 100-322.

AGENT ORANGE ISSUES

Mr. Chairman, last month Secretary Derwinski took a bold step towards settling the controversy over Agent Orange. Citing the interests of the veterans we serve, the Secretary announced that VA would not seek an appeal of a court's ruling that some VA regulations relating to Agent Orange had missed the mark intended by Congress.

In early May, Judge Thelton Henderson of the U.S. District Court in San Francisco said that VA had misinterpreted the will of Congress in enacting Public Law 98-542. Judge Henderson said that Congress did not intend that VA service connect diseases on the basis of cause and effect. He said that what Congress meant was that, if the weight of the evidence established a statistical correlation or if the evidence were evenly balanced, VA should service connect the diseases.

VA has a lot invested in its efforts, Mr. Chairman. We have been working with the Advisory Committee for more than 4 years, trying to follow the Congressional mandate that VA perform the fact-finding and make the decisions about Agent Orange. We have already performed what Judge Henderson called the "Herculean" task of reviewing all pertinent scientific literature relating to Agent Orange. Indeed, Mr. Chairman, there simply is no higher level of expertise anywhere--in the Government or in the private sector--with respect to the effects of dioxin than that available to VA.

And Judge Henderson told us that the Advisory Committee had complied with the Congressional mandate. He told us specifically that the Committee's scientific review was the kind of review that Congress had ordered.

But he told us that we made a mistake. He said we were mistaken in believing that we needed to find a cause and effect relationship between exposure to dioxin and disease before we could service connect the diseases suffered by men and women who had left Vietnam 10, 15, or even 20 years before medical problems manifested themselves. He said that was not what Congress meant when it told VA to make its determinations based on "sound scientific and medical evidence." Judge Henderson said that standard was too strict. And he told us that we had failed to apply the benefit of the doubt rule, which we, frankly, did not think applied to rulemaking.

We could have appealed. Your committee counsel know that. But we didn't. Secretary Derwinski announced that VA was going to accept the decision. Enough time has gone by, he said. It's time to get on with it.

And we are. As you know, Mr. Chairman, we are committed to having final regulations implementing the judge's decision issued by October, rules which will permit us to react promptly to the evolving body of scientific data. We intend to have the Advisory Committee immediately review the evidence in light of those new standards. And we intend never to abandon our mission to find the truth.

We do not know where that search will take us, but the truth is our mandate. And we intend to fulfill it.

The bill before the Committee today, S. 1153, has two key provisions: First, it provides interim compensation benefits to Vietnam veterans suffering from non-Hodgkin's lymphoma and soft-tissue sarcoma, as well as interim dependency and indemnity compensation benefits to the survivors of such veterans. Second, the bill sets up a mechanism, wholly separate from VA, to evaluate evidence and make recommendations concerning the association, if any, between exposure to herbicides used in Vietnam and diseases. While VA shares the impatience that prompted S. 1153, we ask that its further consideration be held in abeyance until we have completed our work.

There are suggestive studies which raise questions with respect to non-Hodgkin's lymphoma and soft-tissue sarcoma. The final Selected Cancers Study report from the Centers for Disease Control, which we expect to be available early next year, may shed additional light. We intend to pursue all possible leads in our search for the truth. Should this Committee conclude that the process would be lent credibility by our consulting with additional outside experts, such as the National Academy of Sciences (NAS), we would be pleased to do so if that kind of consultation would not unduly delay our progress. Nor would we object to an expansion of the authorized size of the Advisory Committee to permit additional viewpoints to be represented. Finally, we would not object to an independent review of our conclusions, after the process now underway is completed, by any entity which the Congress believes would lend credibility to the determinations.

We have, I believe, more than demonstrated our good faith. We have the word from the Federal Bench as to the proper standard. And we believe that some of the world's leading experts in this area--the Advisory Committee--should be given a chance to complete their work.

Abandoning the current rulemaking mechanism for identifying herbicide-related diseases in exchange for what is suggested in the bill would add a lot more time to the resolution of the questions. It could take months before this bill becomes law. It will also take time to negotiate a contract with NAS, assuming NAS is willing to take on this mission. Then we must wait for specific appropriations to fund the contract. Further, NAS would essentially start from scratch on a review that has already been done by others, or is well underway. We are looking, Mr. Chairman, at a delay of from 1 to 3 years.

VA--as much as anyone--is acutely aware of the strong feelings on this issue. We want the matter resolved, and are prepared to continue to follow the mandate you gave us 5 years ago. That mandate, Mr. Chairman, centers on a search for truth. We are prepared and eager to continue that search.

VA SECURITY ISSUES

The final matter I will discuss, Mr. Chairman is Section 221(a) of S. 13. This provision would assign the functional and technical supervision of the performance of security and law enforcement functions to the Assistant Secretary assigned management, productivity, and logistic support functions, whereas these responsibilities are now administratively assigned to the Veterans Health Services and Research Administration (VHS&RA). Section 221(a) would thus clearly require a departure from the way VA's security program is now operated. We oppose this provision.

Initially, we direct the Committee's attention to the role that the VA's police play in its health care program. The principal responsibility of VA police has historically been to protect patients, employees, visitors, and property at VA health centers. In addition to their protective role, VA police also have the equally demanding responsibility of enforcing federal laws on property under the jurisdiction of VA.

Given the nature of VA's patient population, who often have suffered not only the physical but also the mental ravages of war, VA police must have and display a sensitivity to the needs of those they must protect, and perhaps restrain, which other Federal police forces do not. It is precisely because of that responsibility that VA police are a vital part of patient care, and have been invaluable in quelling disturbances and resolving episodes of disorderly or assaultive conduct with understanding and restraint.

Because of the need to temper their protective responsibility at VA health care facilities with sensitivity to patients and their families, VA police have been administratively placed under the authority of the VA element responsible for operating its health care system, VHS&RA.

We are aware of problems in the operation of the VA police force which, unfortunately, have diverted attention from the very real benefits that the VA police force has provided at many VA facilities. We believe, however, that the answer to these problems is not to realign the responsibility for the security function. Rather, we believe the answer is to make a renewed commitment to assure that, within the context of VA's current organizational structure, every effort is made to assure the proper functioning of a properly educated and trained police force.

This commitment extends to continuing our efforts to upgrade the job classification for VA police officers. VA has long believed that VA police functions warrant a job classification which reflects the nature of their complex and sensitive positions. We will continue to explore the potential for reclassification to achieve that result.

We recognize as well that our commitment to assure the quality of VA's police force must extend to reviewing the need to upgrade the training and technical and professional expertise of VA policemen. VA policemen are currently trained at our facility in Little Rock, Arkansas. In an effort to verify that the training there is sufficient to meet the needs of the VA, we have already reviewed it in some detail. In that review, we had the assistance of outside professionals with expertise in law enforcement. We remain open, as the need for further review becomes apparent, to consulting further with outside experts on the Little Rock program and other aspects of our training.

Our commitment to appropriate training of our police officers extends as well to our determination to provide continuing training to supplement and enhance the technical and professional requirements now demanded of them. Many professionals continue to receive training to enhance their skills even after they have reached a minimum level of competence in their fields. We believe VA policemen, like other professionals, should also continue to receive training to assure that their skills, as professionals, will not diminish, but be enhanced. In reviewing the training program at Little Rock, we intend to consider whether and how such additional training, and recertification if necessary, may best be accomplished.

In recognizing the need for a new commitment of attention and resources to the effective functioning of VA's police force, we believe the installation of new central office management for the program presents an ideal opportunity to give effect to the commitment that we are making through these and other intiatives.

Clearly, new management for the security service in VHS&RA faces a task that will require the unqualified support of the Department. But we believe that support will be provided without altering the structure which has evolved over the course of VA's history to meet the precise needs of the veterans the Department is charged with serving. Moreover, we generally oppose the assignment by statute of particular management functions within the Department. Consequently, we believe section 221(a) is not warranted, and we oppose its enactment.

Section 221(b) of S. 13 would require VA to provide the Congressional Veterans' Affairs Committees with a report containing: (1) the Secretary's plan for improving the training, recruitment, and pay of VA security and law enforcement personnel, and (2) the Secretary's assessment of the need for establishing a policy on the issuance of weapons (firearms) in certain high crime areas and the advisability of reducing VA police services at some VA facilities in order to increase those services at VA facilities with significant security problems. VA does not object to this provision. We also understand that the Department of Justice will be providing you with a report on this provision, recommending a minor modification in the bill to assure that VA consults with the Attorney General on development of any regulations which may be recommended in this report. We have no objection to such a requirement which is consistent with the consultant relationship we have had over the years.

In summary, Mr. Chairman, we are committed to doing whatever is necessary to make the VA police force a thoroughly professional and properly trained component of the VHS&RA. That commitment does not require the legislative change which section 221 of S. 13 has proposed. Accordingly, we cannot support that proposal. We have, however, no objection to the reporting requirements of section 221(b) of the same bill.

This concludes my statement, Mr. Chairman. I will be pleased to respond to any questions you or the members of the Committee may have.

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

AUG 3 1989

Honorable Alan Cranston
Chairman, Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

During the Senate Veterans' Affairs Committee hearing held June 22, 1989, the proposal contained in S. 1158, the "Veterans Home Loan Guaranty Restructuring and Solvency Act of 1989", providing veterans the option to purchase additional loan guaranty entitlement was discussed. I was asked to submit, for the record, a comparison of the bill proposal with a straight increase in entitlement. The comparison is enclosed.

If I can provide further information please let me know.

Sincerely yours,

Anthony J. Principi

Anthony J. Principi
Deputy Secretary

Enclosure

"America is #1—Thanks to our Veterans"

COMPARISON OF $10,000 ENTITLEMENT INCREASE FOR ALL VETERANS
VS.
PURCHASE OF ADDITIONAL ENTITLEMENT

Currently first time home buying veterans have up to $36,000 in entitlement available which enables them to obtain a home loan of up to $144,000 from lenders utilizing GNMA secondary mortgage market financing. With the exception of certain real estate markets, e.g., parts of California, New England and the New York City area, the $36,000 entitlement is sufficient to allow veterans to purchase an adequate home with no downpayment. The provision of S. 1158 to allow veterans to purchase additional entitlement is directed at veterans living in high cost areas where $144,000 loans provide very limited opportunities to obtain mortgage financing without substantial downpayments.

It should be noted at the outset that a very high percentage of foreclosures occur at the lower loan amounts. During the 1980's approximately 94 percent of all foreclosures were from loan amounts less than $90,000. This group represents about 84 percent of the originations. In general the smaller the loan amount the higher the likelihood of foreclosure. This bill would only impact on no money down loans above $90,000 because the current $36,000 entitlement provides the maximum 40 percent guaranty at this amount.

A $10,000 dollar entitlement increase above the current $36,000 maximum would mainly assist first time veteran homebuyers obtaining loans in excess of $144,000 who have insufficient cash assets for a downpayment. Qualified veterans could obtain a no downpayment loan up to $184,000 assuming GNMA made the appropriate adjustment in their downpayment/guaranty requirement ($46,000 x 4 = $184,000).

Under a general entitlement increase of $10,000 to all veterans VA's guaranty liability would rise on all loan amounts above $90,000, e.g., on a $100,000 loan to a first time home buyer the guaranty is $36,000 or 36 percent. With a $46,000 maximum entitlement VA's guaranty would be $40,000 or 40 percent. VA's contingent liability would increase and in certain cases VA would pay the lender the full guaranty amount (no bid) in excess of the current $36,000 maximum. In the event of serious economic difficulty characterized by heavy foreclosures and a sharp decline in property values, e.g., Texas, additional liability by VA on those higher loan amounts could result in significant losses to the Government.

However, in a more stable "normal" environment we would expect a very low foreclosure rate on the group of loans above $90,000. Most likely the foreclosure rate would be less than 3 percent in any origination year. At this foreclosure level the current one percent funding fee would produce sufficient income to offset losses from foreclosures on these loans.

EXAMPLE:

One hundred veterans obtain no downpayment loans for $184,000. Each loan is guaranteed by VA for $46,000. The veterans each paid a one percent funding fee or $1,840.

Funding Fee = $184,000 (100 x $1,840)

Three loans go to foreclosure and VA suffers its maximum loss on each loan $46,000.

TOTAL LOSS = $138,000

At the 3 percent foreclosure level VA would not incur an overall loss. A 4 percent foreclosure rate produces the break even point, i.e., 4 x $46,000 = $184,000.

However, it is unlikely VA would suffer the maximum loss in each case. Therefore, the foreclosure rate would have to exceed 4 percent on this group of loans before VA would experience a loss.

In this same example, had veterans paid an additional one percent fee for the extra $10,000 entitlement, the foreclosure rate would have to exceed 8 percent before VA would experience a net loss.

SUMMARY

Under stable economic conditions the additional $10,000 entitlement provided to all veterans, or purchased as an option, would not increase cost to the government. However, under the straight increase of entitlement the government becomes more vulnerable to loss in the event of severe economic downturn because loan amounts between $90,000 and $144,000 would carry higher government guaranty. This higher guaranty is not necessary to induce lenders to provide financing.

The additional fee income from purchased entitlement would provide a source of revenue to offset losses from foreclosures on lower loan amounts.

STATEMENT OF
RICHARD F. SCHULTZ
ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS AFFAIRS
UNITED STATES SENATE
June 22, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

On behalf of the more than 1.3 million members of the Disabled American Veterans and its Ladies' Auxiliary, I wish to thank you for the invitation to appear here today to present our views on legislation relative to the Department of Veterans Affairs (DVA) Home Loan Guaranty Program, as well as a measure addressing the issue of Agent Orange.

Mr. Chairman, you letter of invitation to testify requests our views relative to several pieces of legislation requiring this Committee's attention and action. These measures are: S. 404, S. 898, H.R. 1415, S. 1153, and S. 1158.

Mr. Chairman, before addressing the issues before us here today, we would first like to take the opportunity to thank you and the members of the Committee for your efforts to ensure that our nation's veterans will continue to have a viable loan guaranty program to assist them in obtaining mortgage credit without a down payment. Clearly, the efforts of the Committee over the past several years has had a positive impact on the operation of this valuable benefit program.

Also, Mr. Chairman, this Committee's efforts to address the complex issue of Agent Orange and its effect on our nation's military forces who served in Vietnam is highly commendable. Hopefully, actions taken by this Committee will lead to a reasonable and meaningful resolution to this perplexing issue.

Loan Guaranty Program

As you know, the Loan Guaranty Program has enabled nearly 13 million veterans to obtain favorable credit terms to purchase a home for themselves and their families. Additionally, this valuable program has been good for America's economy, adding stability and expanding the tax base of nearly every community throughout the country.

As we all know, during the early 1980's, the housing and financial markets experienced a shortage of mortgage funds. This, coupled with increased home prices, as well as the highest interest rate in history (17 1/2% in 1982) and the high rate of unemployment, combined to cause the solvency problem of the Loan Guaranty Revolving Fund. Other factors also adversely impacting upon the Loan Guaranty Program included: faulty appraisal practices; equity skimming schemes; kickbacks in the mobile home industry and; false credit reporting.

Mr. Chairman, we commend the activities of this Committee and those of its counterpart in the House which have resulted in positive steps taken by Congress to institute better management practices within the Loan Guaranty Program and protect it from fraud and abuse by individuals who wish to profit at the expense of our nation's veterans and the American taxpayer. However, while recent actions taken by Congress ensure that the fundamental purpose of the Loan Guaranty Program -- assisting eligible veterans obtain mortgage loans without a down payment -- remains intact, it is clear that these actions alone cannot solve the ongoing financial crisis of the Loan Guaranty Revolving Fund.

H.R. 1415

The Veterans Home Loan Mortgage Indemnity Act of 1989

This measure, passed by the House of Representatives on June 6, 1989, proposes to:

* establish a Mortgage Indemnity Fund (MIF);

* relieve veterans who are covered under the MIF from any liability to the DVA should their loans go into foreclosure (except in the case of fraud, misrepresentation or bad faith on the part of the veteran);

* establish a one and one-quarter percent mortgage indemnity fee (based on the total loan amount) where the down payment is less than 5%;

* establish a three-quarter percent mortgage indemnity fee (based on the total loan amount) in those cases where the veteran has a minimum 5% down payment;

* require the government to pay a one-quarter percent premium (based on the original loan amount) per year for three years;

* exempt veterans with a compensable service-connected disability from paying the mortgage indemnity fee;

* authorize the excess monies to be invested in government securities;

* continue the one percent fee for vendee loans and the one-half percent fee for assumed loans;

* retain the current program for those loans guaranteed prior to the enactment of this measure;

* modify refinancing loan provisions and allow for easier refinancing of certain conventional loans;

* modify Section 3102, Title 38, USC, pertaining to the waiver of debts;

* extend the DVA's foreclosed property acquisition formula until October 1, 1991, and specify that imputed interest costs must be excluded from "net value" determinations;

* require lenders to notify the Secretary immediately should a lender refuse to accept a partial payment from a veteran and include a reason for refusal of such payment; and

* allow the sale of loans with or without recourse only if at least 90% of the loan value is received at the time of

sale and require that these asset sales be scored as offsetting collections.

S. 1158

The Veterans Home Loan Guaranty Restructuring and Solvency Act of 1989

This measure, introduced by yourself, Mr. Chairman, proposes to restructure and improve the DVA Loan Guaranty Program so as to better serve the housing needs of our nation's veterans.

Major provisions of S. 1158 provide for:

* the establishment of a Home Loan Guaranty Fund to carry out the operation of the DVA's Loan Guaranty Program;

* the depositing of a 0.25% fee by the government each year for three years based on the original amount of veterans' loans;

* authorization to invest that portion of the Loan Guaranty Fund not required to meet current payments made from the Guaranty Fund;

* the establishment of loan fees,based on the total amount of loans,as follows:

1.25% for loans with down payments of less than 5%
0.75% when there is a down payment of not less than 5%
0.25% in the case of a down payment of at least 10%
2/3 of 1% fee for assumed loans;

* fees for veterans in receipt of compensation for service-connected disability and surviving spouses of veterans who died of service-connected disabilities will be paid by the government;

* authorization for the Secretary of the DVA (after reporting to the Senate and House Veterans Affairs Committees) to increase the loan fees if necessary to keep the Loan Guaranty Fund solvent;

* a release from liability to the DVA for loss resulting from default except where there is shown to be fraud, misrepresentation, or bad faith by the individual obtaining or assuming a DVA loan. Also, where it is shown that the

default or liquidation resulted from circumstances not beyond the individual's control, there will be no release from liability to the DVA;

* extending, until October 1, 1990, the DVA's authority to sell loans with or without recourse with the proceeds of such sales credited to the Loan Guaranty Revolving Fund as offsetting collections;

* permitting a veteran to purchase additional loan guaranty entitlement up to $10,000;

* lender notification to DVA when lender refuses to accept an offer of partial payment of loans in default and reasons why the lender refused such payment; and

* the prohibition against DVA considering the cost of borrowing funds in determining the "net value" of property for the purposes of the "no bid formula," except to the extent that one-half of the amount by which the cost of borrowing the funds necessary to acquire the property exceeds the cost of borrowing funds that would be needed to pay the guaranty.

Mr. Chairman, the DAV applauds your efforts to craft a measure in such a way that it will not only make the DVA Home Loan Guaranty Program solvent, but also provide a meaningful benefit to our nation's veterans. Your measure (S. 1158) and H.R. 1415, recently passed by the House, are similar in that they both establish a new Home Loan Guaranty Program within the DVA that will protect veterans from future financial loss should unfortunate circumstances cause their DVA loans to go into foreclosure.

Mr. Chairman, the DAV generally supports the goals of S. 1158 and H.R. 1415. However, as you know, these measures differ somewhat in their approach to improving the Home Loan Guaranty Program. With your permission, I would now like to comment upon these differences.

In dealing with the issue of releasing veterans from liability to the DVA in the event of a foreclosure, the House measure provides such relief except in those instances where there are indications of fraud, misrepresentation or bad faith on the part of the veteran obtaining the loan or in connection with the loan default. Your measure, Mr. Chairman, adds to those exceptions by also stipulating that, in those cases in which the default is not for reasons beyond the veteran's or assumptor's control, the individual will continue to be liable to DVA for any loss incurred as a result of such foreclosure.

Mr. Chairman, we agree that individuals who deliberately cause a loan to go into foreclosure should not be indemnified against loss. However, we are concerned that by adding a provision that veterans will retain liability to DVA in cases where a foreclosure is determined to be "for reasons not beyond the veteran's control," DVA will interpret this too broadly and wrongfully deny indemnification to veterans in some cases.

We base our concerns, Mr. Chairman, on the track record of the DVA in denying waivers of indebtedness incurred through the Home Loan Guaranty Program. We believe DVA frequently denies claims for waiver of indebtedness for service-connected veterans in receipt of compensation (even though there may be a proximate "balancing of fault" in creating the indebtedness on the part of the DVA and the veteran), since the DVA knows it can recoup the indebtedness from future compensation payments.

Our fear, Mr. Chairman, is that some individuals, for example, may hold the view that bad investments or the purchase of an expensive automobile may constitute "reasons not beyond the veteran's control." By allowing DVA to look beyond the issue of fraud, misrepresentation or bad faith, we may be placing additional burdens on veterans who are dealing with the trauma of having lost their family home.

Mr. Chairman, we believe the addition of "reasons not beyond the veteran's control" are unnecessary to maintain the integrity of the DVA's Home Loan Guaranty Program and may cause some deserving veterans to be denied indemnification.

Mr. Chairman, both S. 1158 and H.R. 1415 will extend the current "no-bid" formula until October 1, 1991. The House bill also prohibits the inclusion of the cost of borrowing funds in the net value determination. S. 1158, however, would restrict this practice by stipulating that only 50% of the amount by which the amount that the DVA would be required to pay in order to acquire the property exceeds the amount of the guarantee may be included in the net value determination.

Mr. Chairman, as previously stated, DAV's concern is that veterans continue to have a viable loan guaranty program available to them. To accomplish this objective, we need the participation of the U.S. government and mortgage lenders. Obviously, when DVA acquires foreclosed properties, mortgage lenders are "made whole." Conversely, in those same instances DVA often suffers losses.

When deciding what action the Committee will ultimately take on this controversial issue, we urge that the Committee keep in mind the purpose for which the program was created and endeavor to strike a fair balance between the needs of veterans, their government and mortgage lenders.

Mr. Chairman, a provision of H.R. 1415, not contained in S. 1158 addresses the issue of waiver of recovery of indebtedness, including indebtedness incurred through the Loan Guaranty Program.

In the absence of fraud, the DVA has traditionally considered two thresholds in waiver determinations: material fault on the part of the debtor, and the debtor's ability to repay the indebtedness. Generally speaking, if significant material fault on the part of the debtor is shown, further consideration under the standard of equity and good conscience is precluded, and the claim for waiver denied.

On the other hand, if less than total material fault on the part of a veteran is shown, DVA is required to apply the standard of equity and good conscience and consider such factors as the veteran's ability to repay the debt, given his current assets, income, liabilities, hardship, etc. These factors may then dictate favorable resolution of his request for a waiver.

On occasion, it is determined that there exists a proximate balance of material fault in the creation of indebtedness on the part of the DVA and the debtor. These claims for waiver are routinely denied based on a determination that the debtor has (or in the future is likely to have) the ability and financial resources to repay the indebtedness.

Mr. Chairman, H.R. 1415 would preclude an adverse waiver determination by the DVA for loan guaranty indebtedness solely on the basis of a balancing of fault between the DVA and veteran in the creation of this indebtedness. DVA would then have to afford the veteran consideration under the equity and good conscience standard. We support this proposed change of law.

Likewise, Mr. Chairman, we also support that portion of this measure that would preclude an adverse loan guaranty waiver determination based solely on whether the veteran might be able to repay the indebtedness. Currently, DVA personnel charged with making waiver determinations are readily aware of the amount of monthly compensation a service-connected disabled veteran receives.

As you know, compensation is intended to "make up" for earnings impairment experienced due to a service-connected disability, and these funds are normally used by veterans to pay for such necessities as food, housing, education, and medical expenses for themselves and their families.

As previously stated, we believe DVA frequently denies claims for waiver of indebtedness for service-connected veterans in receipt of compensation (sometimes, even though there may be a proximate "balancing of fault" in the creation of indebtedness) since they know they can recoup this indebtedness from future compensation payments. Thus, compensation paid to a veteran for his service-connected disabilities -- and used by him to support a broad array of expenses incurred by his family -- is withheld in whole or in part until the indebtedness is liquidated.

We believe the waiver modification contained in H.R. 1415 would be beneficial for all veterans and result in more equitable waiver determinations for those veterans who incur a home loan guarantee indebtedness. We therefore urge this Committee's support of this provision.

Mr. Chairman, S. 1158 contains a provision not contained in H.R. 1415 which will permit the Secretary of Veterans Affairs to increase the loan fee should it become necessary to maintain the solvency of the program. While we have no objection to this provision, we suggest that if the fee is to be increased during a period of insolvency, the Secretary should also be given the authority to reduce the loan fee when excess funds are available to the Loan Guaranty Revolving Fund.

S. 1583 also proposes to allow veterans to purchase an additional amount of loan guaranty coverage up to $10,000 at a cost of 0.1% per $1,000 of entitlement, so long as the total of the guaranty and any down payment does not exceed 25% of the purchase price. A waiver to the 25% restriction could be made by the Secretary in order for a veteran to use a DVA guaranteed loan in expensive market areas. The House bill (H.R. 1415) does not contain these provisions.

Mr. Chairman, the DAV has always been opposed to charging veterans for the use of an earned benefit entitlement. However, we recognize the fiscal crisis facing the Loan Guaranty Revolving Fund and, for that reason, have supported limited fees for use of the Home Loan Guaranty by veterans without service-connected disabilities. Charging veterans higher fees for the use of the Loan Guaranty Program in certain high cost areas we believe to be unfair.

Mr. Chairman, if it is your intent to assist veterans in high cost areas, then why not increase the loan guaranty amount? This, we believe, would be more in keeping with the entitlement aspects of the Loan Guaranty Program.

Mr. Chairman, other differences in these measures include:

* the Senate measure, in addition to offering a lower loan fee for individuals who make a 5% down payment, also would offer a reduced loan fee for down payments of 10%;

* a Senate provision which also requires the government to pay the loan fee for service-connected disabled veterans and survivors of veterans who died as a result of a service-connected disability; and

* a Senate provision that will increase the loan fee for assumed loans and provide indemnification to these individuals.

Mr. Chairman, the DAV has no objection to the above listed provisions of S. 1158.

S. 898

The Veterans Housing Act Amendments of 1989

This measure, introduced by yourself, Mr. Chairman (by request), proposes to make a number of changes to the DVA's Loan Guaranty Program.

Section 2 of this bill would change current law pertaining to refinancing of certain loans guaranteed by DVA. Currently, only 90% of the appraised value of a home may be refinanced through the DVA. As we understand it, this provision was placed into law in response to Congressional concern that some individuals were cashing out their equity in their homes. Obviously, this is not the intent of the Loan Guaranty Program.

Mr. Chairman, we do not object to providing the full loan guaranty in those instances that do not involve cash back to veterans.

Section 3 of this measure would permit the DVA to sell loans with or without recourse. As you know, past sales of DVA loans have netted, in some instances, only 55 or 56 cents on the dollar. We believe that these short-sighted management decisions to sell a large portion of the DVA's loan portfolio at bargain basement prices, while providing immediate cash to the Loan Guaranty Revolving Fund will, in our opinion, have long-term adverse effects on the solvency of the Loan Guaranty Revolving Fund. Therefore, we cannot support the sale of DVA loans with or without recourse unless a fair price is received for these loans.

Mr. Chairman, Section 4 of the bill would extend the one percent loan origination fee through September 30, 1991. This action will not be necessary should Congress pass legislation which encompasses those provisions of S. 1158 and H.R. 1415, establishing a fee to provide for the elimination of liability to DVA for veterans who default on their loans.

Section 5 will repeal the requirement that DVA inspect the manufacturing process of manufactured homes and perform a random on-site inspection of manufactured homes purchased with a DVA loan guaranty. DVA asserts that the National Manufactured Housing Construction and Safety Standards Act of 1974 is sufficient to ensure that new manufactured homes purchased by veterans with a DVA loan guaranty will be properly constructed and suitable for occupancy and use.

Mr. Chairman, if, in the opinion of the Committee, the 1974 Act mentioned above is sufficient to protect veterans' interest with regard to the purchase of manufactured housing, we would pose no objection to this change.

Section 6 of this measure would repeal Section 1804(e) of Title 38, USC, in its entirety. DVA indicates that this Section is no longer necessary, as federal, state, and local laws now adequately address the subject of individual water and sewage systems as an alternative to public and community water systems. Also, the DVA indicates that the certification required by Section 1804(e) places an additional burden on local officials and program participants without materially benefitting veterans.

Mr. Chairman, we certainly do not desire to see undue burdens placed on local officials, however, without certification by local officials that adequate sewerage and water is available, how will DVA know that the best interests of veterans are being protected.

Section 7 of this legislation proposes to expand DVA's authority to collect housing loan debts by offsetting a debtor's federal tax return.

Mr. Chairman, in most instances, a veteran who loses his home through foreclosure is experiencing extreme financial difficulty and, in all probability, does not have adequate financial resources to care for his housing and other family needs. We therefore must question any attempt to place additional financial hardships on these individuals by allowing DVA to offset federal tax returns. Also, this would be made moot by the passage of legislation to indemnify veterans' against loss should their home loans go into foreclosure.

Section 8 proposes to change current law by placing a 180 day limit on the time during which a veteran may request a waiver of a home loan indebtedness. Also, this Section would make a technical amendment to Title 38 to make it clear that active duty members are eligible for waiver consideration on the same terms as all other veterans.

Mr. Chairman, we are opposed to that portion of Section 8 which would establish a 180 day time limitation on request for waiver of home loan indebtedness. It is our belief that, with the emotional trauma of losing a home and the often confusing and time-consuming process of foreclosure, many veterans will not take advantage of the administrative remedies to clear themselves of the financial obligation to DVA in the 180 day prescribed time limit. Therefore, we would urge the Committee to reject this provision of S. 898 and retain the current statute regarding request for waiver of home loan indebtedness.

Section 9 of this measure proposes to amend current law to clarify that persons on active duty are veterans for purposes of eligibility to DVA Home Loan Guaranty.

Mr. Chairman, we have no objection to this provision.

Section 10 of S. 898 would make permanent the claim payment and property acquisition provisions contained in Title 38, Section 1832(c), USC.

As you know, Mr. Chairman, the Conference Report to the Deficit Reduction Act of 1984 makes it clear that the Congress did not intend to change the DVA policy of not considering interest costs that the U.S. would incur if it were necessary for the government to borrow the funds for a particular acquisition. Also, in its report on H.R. 1415, the House Committee on Veterans Affairs asserts that "because the Secretary is not charged any interest cost for funds used in acquiring a foreclosed property, the cost of government borrowing is not a cost incurred by the Secretary and should not be permitted under this statute to be included in the definition of 'net value'."

Mr. Chairman, as you know, S. 1158 also would prohibit the DVA from considering the full cost of borrowing funds when determining "net value" and require that the guaranty amount be subtracted from the total amount necessary to buy the home at foreclosure before any interest costs may be added to the cost of acquiring a home.

Mr. Chairman, in determining what action Congress will ultimately take on the so-called "no-bid" formula, we suggest careful consideration of all the issues affecting the "no-bid" and would hope that the Congress can strike a balance that will not discourage or inhibit the participation in the DVA Home Loan Guaranty Program by both the federal government and private mortgage companies.

* * *

S. 404

This bill, introduced by yourself, Mr. Chairman, with the Ranking Minority Member of this Committee, will, if enacted, extend the loan guaranty fee through September 30, 1991, and extend the current "no-bid" formula.

Mr. Chairman, since these issues are covered in other legislation being discussed in this statement, I will not discuss them here.

S. 1153

Introduced by yourself, Mr. Chairman, Senator Daschle and Senator Kerry, as well as 20 of your colleagues, S. 1153, the "Veterans Agent Orange Exposure and Vietnam Service Benefits Act of 1989," represents, in the DAV's view, a comprehensive and meaningful measure aimed at addressing the concerns of Vietnam veterans who may have been exposed to Agent Orange.

At the outset, Mr. Chairman, the DAV wishes to acknowledge and applaud the principal architects of this measure -- yourself, Senator Daschle and Senator Kerry -- for clearly displaying and acting upon your collective commitment regarding this most complex, vexing and divisive issue of Agent Orange.

On May 12, 1988, the DAV was privileged to appear before this Committee and offer our perspective and views on Agent Orange legislation then pending -- S. 1692 and S. 1787. At that hearing we offered comprehensive testimony on a number of measures that are the same or similar to those contained in S. 1153. Additionally, we proposed certain concepts which were felt to represent desirable and necessary ingredients in attempting to piece together the many parts of this intriguing puzzle.

Mr. Chairman, Section 2 proposes providing interim disability and death benefits -- through April 15, 1992 -- based on a veteran's Vietnam service and who is suffering from or is deceased due to non-Hodgkins lymphoma or soft tissue sarcoma.

Additionally, a mechanism is proposed that would enable the Congress -- after January 1, 1992 -- to extend the authority to provide these interim benefits or to make them permanent.

Mr. Chairman, the DAV strongly and fully supports granting presumptive service-connection for non-Hodgkins lymphoma arising in veterans who were exposed to Agent Orange during service in Vietnam. Enactment of this measure would satisfy a mandate of the delegates to our most recent National Convention (DAV Resolution No. 271, copy attached).

In our view, a sufficient body of scientific and medical evidence exists to adequately support this measure. Although research is not yet precise -- and it may never be -- in establishing a relationship between exposure and subsequent developing disease, the weight of the research conducted relating to non-Hodgkins lymphoma is sufficient, in our opinion, to tip the balance when considering this particular disability.

Although we favor creating a permanent presumption for non-Hodgkins lymphoma -- and we would urge the Committee to enact such legislation -- we will not necessarily oppose the provision of providing interim benefits.

With respect to the issue of providing disability and death benefits related to soft tissue sarcoma, we are unable, at this time, to support this measure. We remain of the opinion that there is a paucity of scientific and medical evidence or sufficient documentation to support such a provision.

Mr. Chairman, Section 3 proposes appropriate amendment to Section 312, Title 38, USC, granting a presumption of service-connection for chloracne or "another acneform disease consistent with chloracne" which became manifest to a compensable degree within one year after the last date on which the veteran performed service in Vietnam.

Mr. Chairman, the DAV is supportive of this provision.

Mr. Chairman, with respect to Section 4 of the bill, we have no objection to implementing a procedure that would require the DVA to seek a mechanism attempting to identify and determine -- based on available scientific literature -- specific disabilities that are reasonably associated with exposure to Agent Orange.

We would offer a cautionary note, however, that the organization charged with this responsibility not proceed in a passive manner or be duplicative of similar ongoing studies and efforts. Of course, following a review of any report findings made as a result of such a survey, we will be pleased to again revisit the issue of presumptive service-connection for certain specific disabilities.

Mr. Chairman, Section 5 of the bill would require the Secretary to compile and analyze, on a continuing basis, all clinical data obtained by the DVA in conjunction with examinations and treatment furnished to veterans, after November 3, 1981, who received medical care from the DVA based on their service in Vietnam and claimed exposure to Agent Orange.

Mr. Chairman, we agree with the intent of Section 5. It is our belief that an exercise of compiling and analyzing the examination and treatment results of certain veterans may indeed prove beneficial and assist in the search for solutions to the Agent Orange issue.

Mr. Chairman, the DAV is pleased to extend our general support to the remaining sections of S. 1153 which propose:

* establishment of a tissue archiving system of veterans' blood and tissue samples;

* funding appropriate independent pilot studies to determine if further specific scientific research regarding Agent Orange is feasible;

* enhancing the Department's outreach efforts regarding Agent Orange;

* a report by the Secretary of Health and Human Services on research being conducted to identify and develop treatments for exposure to dioxin and other agents in herbicides;

* extending -- until December 31, 1993 -- veterans' eligibility for DVA health care services based on exposure to Agent Orange or radiation; and

* making certain technical amendments to the reporting procedures related to the Air Force's Ranch Hand Study.

In view of the complex nature of this issue and the varied controversies surrounding Agent Orange we feel compelled to make one final point.

As you will very well recall, Mr. Chairman, certain issues surfaced following last year's Agent Orange hearing that spurned an active debate in the Senate. To assist the Senate in its' deliberations on the purely scientific questions which are at the core of this issue, recognized scientific experts were requested to assess and evaluate certain sources offered in conjunction with the then pending legislation.

Mr. Chairman, such a process, although desirable is prone to be lengthy. In our view, such an exercise has very real potential to delay the timely passage and enactment of other important veterans legislation, most notable the very much needed cost of living adjustment (COLA) for service-connected disabled veterans, their families and survivors, proposed to be effective December 1, 1989.

The DAV will continue in an advocacy role to ensure that the needs of Vietnam veterans exposed to Agent Orange are addressed. Also, the DAV has no quarrel with this issue being debated publicly or on the Senate floor. In fact, we encourage such debate.

However, Mr. Chairman, we do not wish to see expeditious Congressional approval of the pending COLA legislation -- which represents the single most important legislative issue to our membership on an annual basis -- endangered due to any other measure(s) that may be controversial.

Mr. Chairman, this concludes my testimony and I would be pleased to respond to any questions you or members of the Committee may have.

RESOLUTION NO. 271
LEGISLATIVE

SUPPORTING OF A PRESUMPTION OF SERVICE-CONNECTION FOR NON-HODGKIN'S LYMPHOMA RESULTING FROM EXPOSURE TO AGENT ORANGE

WHEREAS, the Disabled American Veterans has taken the position that service-connection should be extended to any identifiable residual disability or disease scientifically proven to be the result of exposure to the chemical defoliant Agent Orange or any other phenoxy herbicide; and

WHEREAS, the National Cancer Institute, Bethesda, Maryland, has recently issued a report of a scientific study indicating that Kansas agricultural workers exposed to the phenoxy herbicide 2,4-dichlorophenoxyacetic acid (2,4-D) have a six-fold above normal incidence of non-Hodgkin's lymphoma; and

WHEREAS, indications of a similar causal relationship between exposure to the phenoxy herbicide 2,4-D and the subsequent development of non-Hodgkin's lymphoma was evidenced in an epidemiological study reported in Sweden in 1979-1981; and

WHEREAS, 2,4-D is an active ingredient contained in the chemical defoliant Agent Orange; NOW

THEREFORE, BE IT RESOLVED that the Disabled American Veterans in National Convention assembled in Dallas, Texas, July 24-28, 1988 support legislation in the Congress which would authorize a presumption of service-connection for the condition of non-Hodgkin's lymphoma arising in veterans who were exposed to the chemical defoliant Agent Orange during service in Vietnam.

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VETERANS OF FOREIGN WARS OF THE UNITED STATES

OFFICE OF THE DIRECTOR

STATEMENT OF

DENNIS M. CULLINAN, ASSISTANT DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

WITH RESPECT TO

VA HOME LOAN AND AGENT ORANGE LEGISLATION

WASHINGTON, D. C.

JUNE 22, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

On behalf of the 2.2 million members of the Veterans of Foreign Wars of the United States I wish to sincerely thank you for inviting our participation in today's important hearing. Under consideration today is legislation affecting the VA Home Loan Guaranty Program, as well as Agent Orange legislation. The VFW has taken an active interest in both of these issues through the years and we are highly gratified at being able to play a role in today's hearing. The veterans of this nation, especially Vietnam-era veterans, may benefit greatly by the outcome of today's hearing.

First under consideration today is **S. 404**, a bill sponsored by the Chairman of this Committee, Senator Cranston, together with the Ranking Minority Member, Senator Murkowski, which would extend certain Department of Veterans Affairs Home Loan Guaranty Program provisions. Although legislation to essentially create a new home loan program is also under discussion today, we will address this particular legislative proposal with respect to the impact it would have on the current program.

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S. 404 would provide a 2 year extention of the one percent fee on Department of Veterans Affairs guarantied home loans and of the statutory formula, known as the "no bid formula," governing whether the VA acquires a property at liquidation sales. With respect to the extention of the one percent fee, it is well-known that the VFW has been a strong and active opponent of the imposition of fees on veterans' benefit programs. Veterans have earned their benefits with their blood and sweat, and they should not be further required to pay a fee. Thus, we cannot support this proposed extention except inasmuch as it would serve to prevent the imposition of an even higher fee—as has and continues to be proposed—on veterans utilizing the program. With respect to the proposed extention of the "no bid formula," the VFW has no objection.

Next under consideration today is S. 898, entitled "The Veterans' Housing Amendments Act of 1989," which is a bill to revise the provisions relating to refinancing loans and manufactured housing loans to veterans to modify the procedures for the sale of loans by the Secretary of Veterans Affairs and for other purposes.

Section 2 of this bill would permit VA to guaranty loans for refinance purposes under certain circumstances without regard to the 90 percent of value limitation applicable to such loans. That would permit the veterans involved to receive the equivalent of a no down payment VA purchase money mortgage loan. There are three circumstances under which such full refinancing would be allowed:

1. When a veteran seeks to replace a temporary construction loan with a 30 year replacement loan.
2. When a veteran wishes to replace an installment land sales contract with a more traditional VA mortgage.

3. When a veteran seeks to replace an assumed conventional or FHA loan with a VA loan at a lower rate of interest.

The VFW views this section as a thoughtful proposal which would benefit veterans and supports its enactment.

Section 3 of S. 898 would increase the Secretary's flexibility to sell vendee loans on a non-recourse basis. In the past the VFW has argued strongly in favor of VA utilizing its then existing authority to sell loans on a non-recourse basis. Not only does this just make sense from a bookkeeping point of view, but also lessens VA's financial exposure with respect to loans going into default. Unfortunately, this authority was misused by the President's Office of Management and Budget (OMB) in an attempt to generate a one shot infusion of deficit reducing revenues. Since there was no downward limit on the price for which these loans could be sold, OMB attempted to compel VA to sell off its vendee loans on a non-recourse basis at an overly discounted rate in order to achieve immediate deficit reducing revenues. This would, of course, have had a devastating effect on the VA home loan program. The loan program would have not only suffered severe short term losses, but would also have lost the ability to finance itself in the years to come through an excessive reduction of its revenue generating vendee loan portfolio. Thus, although we support affording the Secretary additional flexibility to sell vendee loans on a non-recourse basis in order to strengthen the operation of the VA home loan program, we would also add that at this time there must be some downward limit, say, 90¢ on the dollar, below which vendee loans may not be sold. We say this not to limit the flexibility of the Secretary, but to prevent any future attempts by OMB to force VA to sell off its vendee loans to achieve the appearance of reducing the deficit while severly undermining the continued long range healthy operation of the VA home loan program.

Section 4 of S. 898 would amend section 1829 of title 38, United States Code to extend the authority to collect a one percent loan origination fee from September 30, 1989, through September 30, 1991. The VFW's position here is the same as just articulated with respect to section 1 of S. 404.

Section 5 of S. 898 would delete the requirement that VA standards for manufactured home sites include requirements to encourage the development of attractive residential areas with respect to scenic and environmental conditions. The bill would also repeal the requirement that VA inspect the manufacturing process of manufactured homes and conduct on-site inspections of such units purchased with VA financing. The bill would further provide that any manufactured home unit that properly displays the Certificate of Conformity with all applicable federal or manufactured home construction and safety standards would be eligible for purchase with VA guarantied loans.

In this regard, the VFW acknowledges that since these provisions were enacted many beneficial changes have taken place with respect to planning and construction standards for manufactured homes, parks and subdivisions. State and local regulatory agencies generally have standards for licensing, occupancy and use which helps prevent overcrowding and other adverse conditions including those which affect the scenic and environmental state of the manufactured home sites. With respect to construction, the VFW also acknowledges that when the Congress enacted the VA manufactured home loan program in 1970 there were no comprehensive regulations ensuring the safety and fitness of manufactured housing. Since that time, however, laws have been enacted which establish federal manufactured home construction and safety standards. Generally, all manufactured homes sold in interstate or foreign commerce must comply with these federal standards. Even so, these standards are certainly not fool proof and we would point to the various scandals and corruption which have beset the manufactured home industry in recent years. We would also point to the fact that VA estimates that enactment of this proposed change in the manufacturing housing program would have no costs or result in savings of less than $100,000 in any fiscal year. Thus, we must question the advisability of eliminating these cost effective VA oversight responsibilities with respect to the manufactured housing program. It is difficult at this time for us to envision how veterans would benefit and we can only foresee more opportunities for harm arising out such a change. Although we do not generally support section 5, we do support the proposed technical amendment contained therein which would add engaging in actions unfair or prejudicial to veterans or the government as a basis for suspension from the program. We concur that this technical correction is desirable to make clear that VA has the authority to suspend manufacturers who engage in such practices.

Section 6 of S. 898 would repeal the requirement for a statement of local officials regarding the feasibility of public or community water and sewage systems as a condition to VA guaranty of loans for the purchase of newly constructed homes. In this regard, the VFW does not know whether federal, state and local laws now adequately address the subject of individual water in sewage systems as an alternative to public and community water systems. Thus, we can only state that we see no advantage to the veteran through the enactment of this section.

Section 7 of this bill would amend section 1826 title 38, United States Code to expand VA's authority to collect housing loan debts by offsetting a debtor's federal tax refund. The VFW does not object to this section.

Section 8 of S. 898 would impose a 180-day time limit during which a veteran may request waiver of a loan guarantied debt. Given the hardship and emotional duress associated with the loss of a home and financial crisis, the VFW does not support this proposed amendment; we do, however, support the proposed technical amendment contained in section 8 of S. 898 which would make it clear that debts of active duty service members are eligible for waiver consideration on the same terms as for all other veterans. Once again, however, we object to the imposition of a time limit dictating when such a veteran may request a waiver of a loan guarantied debt.

Section 9 of S. 898 is a technical correction which would provide that for home loan purposes persons on active duty will be considered to be veterans. The VFW supports this provision.

Section 10 of S. 898 would make permanent the claim payment and property aquisition provisions contained in title 38, United States Code section 1832(c). These provisions determine the VA's claim liability under a home loan guaranty and when the VA may acquire the property which secured the loan. This legislative proposal is the same as contained in section 2 of S. 404 except that it would make this provision of law permanent as opposed to only creating a 2 year extention. In this regard, the VFW has no objection to the continued implementation of the "no bid formula."

The 11th and final section of S. 898 provides the effective dates for the various amendments proposed in S. 898. The VFW's position with respect to effective dates for the various amendments contained in this legislation are, of course, in keeping with our views on the desirability of their implementation.

Next under discussion today is H.R. 1415, legislation introduced by the Chairman of the House Veterans' Affairs Subcommittee on Housing and Memorial Affairs, Mr. Staggers, along with Mr. Montgomery and Mr. Stump entitled the "Veterans' Home Loan Mortgage Indemnity Act of 1989." It is our assessment that this legislative proposal would essentially create a new, more fiscally sound home loan program. The current one percent user fee would be eliminated and replaced with an indemnity fee of 1 1/4 percent which would be collected from veterans utilizing the program. Additionally, for each housing loan guarantied or insured under the new program, an amount equal to .25 percent of the original amount of the loan would be credited by the government into the Indemnity Fund for three fiscal years. This special fund would then be used to pay for the operation of the "new" home loan program and the DVA would also be mandated to invest any excess funds so that this revolving fund would become self-sustaining. This new program with its newly established revolving fund would be separate and apart from the current home loan program and, therefore, revenue generated would be used to offset future losses rather than pay claims on loans previously closed. This approach is intended to allow for build up of reserve which would ultimately improve the long-term solvency of the program.

In this regard, the VFW has in the past supported enhancing the current VA Home Loan Guaranty Program's assets by increasing its portfolio of vendee loans since they generate collections in the form of principal and interest payments. It is our contention that the current program's problems are directly due to OMB having forced the program to sell off a large portion of its best loan assets in past years, thereby severely eroding its ability to generate its own funding. We point out that if the program were allowed to rebuild its portfolio of vendee loans, it would eventually become, once again, self-sustaining. However, we also acknowledge that in all likelihood this would take 10 to 15 years. We are also painfully aware of the large appropriations now required to keep the program running. Therefore, creating a "new" home loan program which is free from the current program's OMB precipitated folly and debt makes sense.

The VFW favorably notes that the 1 1/4 percent indemnity fee that would be charged veteran borrowers would in turn release these individuals from liability in the event of default. It is a matter of record that the Veterans of Foreign Wars strongly opposes any increase in the user fee for VA guarantied home loan. However, we do recognize that if the current one percent funding fee were replaced with a 1 1/4 percent indemnity fee, the veteran would at least get something for his money. That is, if a veteran's loan goes into default, the veteran does not incur the financial burden of having to repay VA for any money lost. At a time when an individual does not even have enough money to keep his own home, such debt can be absolutely devastating. Therefore the VFW strongly supports the implementation of a mechanism for releasing veterans from financial liability to VA in the event of foreclosure.

The Veterans of Foreign Wars supports this legislative proposal inasmuch as it would serve to strengthen and preserve a program that is proven to be an invaluable asset to both veterans and the nation while providing veterans with highly desirable additional mortgage protection in the event of foreclosure. Even so, we would emphasize that we may only back this proposal with the understanding that once the VA Home Loan Program has been restored to financial health that the "mortgage indemnity" fee itself will be eliminated and veterans will no longer be required to pay to participate in the program. It is also our recommendation that once the fee has been eliminated and the VA Home Loan Program is operating solidly in the black, that the available funds be used to revitalize the vendee loan portfolio so as to ensure the long-term financial health and improved operation of the home loan program for this nation's veterans.

The final bill addressing the VA home loan program under discussion today is S. 1158, a bill introduced by Chairman Cranston of this Committee, entitled "The Veterans Home Loan Guaranty Restructuring and Solvency Act of 1989." As is the case with H.R. 1415, S. 1158 would create a new and financially reinvigorated VA home loan program. This bill is substantially similar to H.R. 1415.

This innovative and complex legislative initiative arose out of many years of hard word by the Chairman and Ranking Minority Member of this Committee, Senator Cranston and Senator Murkowski respectively, as well as other distinguished members of the Veterans' Affairs Committee in working to make needed improvements in the program and protecting it from numerous assaults that would have severely diminished its value to veterans. On behalf of the entire VFW membership, I wish to thank and congratulate the aforementioned lawmakers for their past accomplishments with respect to the loan program and for their strong continuing efforts on its and veterans behalf.

Both H.R. 1415 and S. 1158 would establish a new revolving fund to finance loan guaranty program activity. Both would relieve veterans from liability to VA in the event of foreclosure, except in cases of fraud and misrepresentation or bad faith. The Senate bill adds an exception for cases in which the default is not for reasons beyond the veteran's or assumpter's control. The VFW does not agree with this proposed exception. We find the language "reasons beyond the veterans or assumpters control" to be vague and potentionally harmful to veterans. Since outright fraud is already taken into consideration with respect to a veteran's liability, we see no reason to subject veterans to the possibility of an overly zealous bureaucratic interpretation of "own fault." Thus, we view this exception as unnecessary and potentionally harmful for veterans.

Both the House and Senate bills would increase the current loans fees from 1 percent to 1.25 percent, but decrease it to .75 percent for veterans making a down payment of 5 percent. The Senate bill adds a further one-half percentage point decrease for down payments of 10 percent or more, we have no objection to this provision.

The House and Senate bills would also both require a payment by the federal government to the new fund, require the Secretary of the Treasury to invest surplus amounts from new fund and government securities, continue the current one percent fee for vendee loans and continue the fee for assumed loans. The Senate bill would, however, increase the current one-half percent fee to two-thirds of one percent and provide indemnification protection for an assumpter. In this regard the VFW would only point out that a good number of VA loans are assumed by nonveterans and we therefore question the appropriateness of providing a veteran's benefit, namely indemnification against liability, to nonveterans.

Both the House and Senate bill would require that loan assets sales, both with or without recourse, be scored as offsetting collections of the funds in which the original loan fee was deposited. VFW strongly supports this particular provision. We note that because recourse sales in the past have not been scored as offsetting collections the program has appeared to cost the federal government more than has actually been the case.

Both bills would extend the VA's foreclosed property acquisition "no bid formula" until October 1, 1991. The VFW has no objection to this provision. Both bills would restrict VA as to including the government's cost of borrowing from the net value determination for purposes of the "no bid formula." The difference between the two bills is that S. 1158 would permit the cost of borrowing to be included, but only to the extent that interest costs are incurred to borrow 50 percent of the amount by which the amount that VA would be required to pay in order to acquire a property exceeded the amount of the guaranty. In this regard, the VFW would have no objection to either House or Senate provision.

The VFW also supports the provision contained in both bills which would require that a lender immediately notify VA of its refusal of a veteran's offer of partial payment and the reasons for the refusal. The VFW is convinced that many bad loans could be cured if partial payments would be accepted by the bank until such time that a veteran's financial situation allowed the resumption of full payments.

Both the House and Senate bills would require that the government pay the loan fee for veterans with compensable service-connected disabilities. However, the House bill would require that a veteran be 30 percent or more disabled, whereas the Senate bill would only require that a veteran have a compensable disability in order not to have to pay the fee. The VFW supports the Senate version in this instance.

Mr. Chairman we will now address a subject which is a longstanding and very serious concern of the Veterans of Foreign Wars. I am speaking, of course, of veterans who are suffering from Agent Orange or other herbicide related disabilities. With respect to this issue, the VFW has once again made the resolution of the herbicide exposure issue a priority goal, actively supporting liberalizing the criteria to establish as service connected any disability associated with herbicide exposure.

Under discussion today is S. 1153, legislation introduced by Senator Daschle together with Senators Kerry, Cranston, Jeffords, DeConcini, Matsunaga, Rockefeller, Spector, Bradley, Simon, Wirth, Pell, Kerrey, Burdick, Harkins, Gore, Bingaman, Kohl, Moynihan, Biden, Pressler and Chafee. This legislation entitled, the "Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989," would provide interim disability benefits for Vietnam veterans suffering from non-Hodgkins lymphoma and soft-tissue sarcoma and would provide survivors benefits for their spouses through April 15, 1992. The bill would also provide for House and Senate votes after January 1, 1992, under expedited procedures on a resolution to extend or make permanent those benefits. It would also establish a permanent presumption of service connection for chloracne in Vietnam veterans whose chloracne became manifest within one year of their service in Vietnam.

The legislation would provide a mechanism under which the VA must determine, based largely on bienniel independent scientific reviews covering all relevant evidence, whether permanent disability benefits should be given to veterans with non-Hodgkin's lymphoma, soft-tissue sarcoma, or any other disease determined to have a positive association with exposure to Agent Orange or other toxic chemicals in Vietnam.

The Department of Veterans Affairs would also be required to:

- Report on a continuing basis on clinical data from health records of veterans examined or treated for disabilities related to dioxin or other toxic agents in herbicides or Vietnam service in general.
- Additionally, VA would be required to establish a tissue archiving system of voluntarily contributed blood and tissue samples to facilitate future research.
- Fund appropriate independent pilot studies to determine whether or not future scientific research on Vietnam Service-related disabilites is feasible.

This legislation would extend veterans' eligibility for free medical care based on Agent Orange or ionizing radiation exposure through December 31, 1993. Additionally, the Secretary of Health and Human Services would be required to submit a report on research being conducted to identify and develop treatment for exposure to dioxin and other toxic agents in herbicides.

Finally, increased emphasis would be placed on VA outreach services related to Agent Orange and reporting precedures relating to the Air Force's "Ranch Hand Study."

As has already been mentioned, the VFW has made the resolution of the Agent Orange situation a top priority for many years and was gratified to play a role in the formulation of this particular legislative initiative both as it was introduced in the waning days of the 100th Congress and in its current manifestation as S. 1153. Although we strongly contend that much remains to be done with respect to this issue, we also believe that this particular legislative initiative is an important step in the resolution of the herbicide tragedy. Thus on behalf of our entire membership we once again thank all of those involved in the creation and introduction of this bill in the Senate and give it our support.

Mr. Chairman, this concludes my statement. Once again, I wish to thank you and the distinguished members of this Committee for conducting today's hearing and for involving us in the process. I will happy to respond to any question you may have. I thank you.

PVA
PARALYZED VETERANS
OF AMERICA
Chartered by the Congress
of the United States

STATEMENT OF

JOHN C. BOLLINGER, ASSOCIATE LEGISLATIVE DIRECTOR

PARALYZED VETERANS OF AMERICA

BEFORE THE

SENATE COMMITTEE ON VETERANS' AFFAIRS

CONCERNING

H.R. 1415, THE "VETERANS' HOME LOAN MORTGAGE INDEMNITY ACT OF 1989"

S. 1158, THE "VETERANS HOME LOAN GUARANTY RESTRUCTURING AND SOLVENCY ACT OF 1989"

S. 404, A BILL TO EXTEND CERTAIN DVA HOME LOAN GUARANTY PROGRAM PROVISIONS

S. 898, THE "VETERANS' HOUSING AMENDMENTS ACT OF 1989"

S. 1153, THE "VETERANS' AGENT ORANGE EXPOSURE AND VIETNAM SERVICE BENEFITS ACT OF 1989"

JUNE 22, 1989

Mr. Chairman and Members of the Committee, on behalf of the members of Paralyzed Veterans of America (PVA), I wish to thank you for this opportunity to testify today concerning various legislative provisions relating to the DVA's Home Loan Guaranty program and legislation addressing exposure to Agent Orange.

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DVA HOME LOAN GUARANTY

Mr. Chairman, PVA appreciates your efforts to address the various problems facing DVA's Home Loan Guaranty program. With billion dollar appropriations becoming the norm, we believe Congress must enact legislation in the near future which will reverse the trend of the present fiscal crisis which threatens this once healthy, self-supporting benefit program. PVA is, therefore, optimistic about the various legislative proposals before us today.

Since its inception in 1944, the DVA's Home Loan Guaranty program has made home ownership a reality for approximately 13 million veterans and service personnel and has provided credit totalling over $300 billion. The purchase of a home is generally the largest single investment an individual will make in a lifetime. For many of PVA's service-connected members who qualify for the specially adapted housing grant, the present loan guaranty program provides important benefits which facilitate the purchase of a home and offer a certain degree of financial advantage. For over half of our members who are nonservice-connected for their spinal cord injuries or diseases, such a purchase takes on additional significance. With a significantly smaller pool of available and accessible/adaptable houses, these catastrophically disabled veterans are extremely vulnerable to shortcomings in DVA housing programs. It is for this reason that we take a special interest in the well-being of the program and DVA's ability to administer it.

Mr. Chairman, I will first discuss each home loan bill separately and then provide, in my conclusion, several general remarks regarding the collective effect of the bills and several concerns that we have regarding certain trends in the program.

H.R. 1415 - The "Veterans' Home Loan Mortgage Indemnity Act of 1989"

Mr. Chairman, PVA has testified on several occasions regarding H.R. 1415, introduced this year by Rep. Harley O. Staggers, Jr., and similar legislation introduced in the House of Representatives last year. H.R. 1415 was passed by the full House earlier this month and we are grateful that you have included it in the hearing today. As expressed in the Independent Budget submitted last January for FY 1990, we believe the bill contains a number of provisions which will begin to resolve the major problems facing the current program.

As you know, H.R. 1415 will establish in the Treasury a revolving fund known as the Veterans' Mortgage Indemnity Fund. This indemnity fund will be available to the Secretary for all operations (other than administrative expenses) carried out with respect to DVA guaranteed or insured loans for which a fee is collected under the "Veterans' Home Loan Mortgage Indemnity Act of 1989". We support this provision of the bill.

The establishment of the proposed loan indemnity fee lies at the heart of H.R. 1415. Each veteran or service person will be required to pay a 1.25 percent fee which can be financed over the lifetime of the loan. For this comparatively small premium, one is purchasing indemnity from the DVA and is therefore protected from financial devastation due to indebtedness to the Government on a defaulted home loan. We believe the fee represents a good investment in the individual's financial security as well as contributing to the overall fund. In addition to this security, the individual will continue to benefit from the entitlement features of the program - little or no downpayments, lower than conventional interest rates, and one point maximum payments to the lender.

As a result of inter-agency research, it was determined that 2 percent of each guaranteed loan amount would be needed to make the proposed mortgage indemnity fund operate on a sound fiscal basis. Therefore, in addition to the veteran's fee of 1.25 percent, H.R. 1415 requires the Government to subsidize .25 percent of each loan for three fiscal years beginning with the fiscal year in which the veteran's fee was collected. The total Government subsidy would be .75 percent over the three year period. Although PVA can currently support this ratio between the veteran's fee and the Government's contribution, we believe that this formula should be adjusted in favor of the veteran assuming that the indemnity fund becomes solvent in several years.

We believe the other fees proposed in H.R. 1415 - .75 percent instead of 1.25 percent if the veteran makes a downpayment of not less than five percent of the purchase price or construction cost, and .5 percent from a person who assumes a DVA loan, are proper initiatives.

As a result of an amendment to H.R. 1415, the House bill also contains a provision which would waive the indemnity fee for all veterans with compensable service-connected disabilities. The Government would continue to pay its contribution even though the fee is waived. PVA also supports the amendment which states that veterans will not be indemnified against loss to the Department if there are indications of fraud, misrepresentation, or bad faith.

Regarding the sale of vendee loans, we endorse the provision in H.R. 1415 which states that the Secretary may sell a vendee loan with or without recourse, but only if the amount received at the time of such sale is equal to an amount which is not less than 90 percent of the unpaid balance of the loan. We believe this provision gives the Secretary a reasonable degree of flexibility when transacting the sale of vendee loans while, at the same time, prohibiting such sales at outrageously low prices.

PVA also supports the provisions in H.R. 1415 which address the computation of entitlement and the waiver of debts. In the case of debts, H.R. 1415 would preclude an adverse waiver determination based solely on the balancing of fault between the DVA and the veteran. The Department would then have to apply the "equity and good conscious" standard.

In addition, waiver of loan guaranty debts would not be based solely on the veteran's ability to repay the debt. Veterans in receipt of service-connected disability compensation represent easy marks for debt collection activities and therefore may find their waiver requests denied simply because it is administratively expeditious to recoup such debts. We support that provision of H.R. 1415 which precludes the denial of a waiver request when the denial is based solely on the veteran's ability to repay the debt.

In summary, we believe H.R. 1415 is a good bill. We are optimistic that the provisions contained in this legislation will restore the DVA Home Loan Guaranty program to a financially solvent benefit program.

S. 1158 - The "Veterans Home Loan Guaranty Restructuring And Solvency Act of 1989"

Mr. Chairman, PVA is most grateful for your introduction of this bill which would restructure the current DVA loan guaranty system and, we believe, create a solvent program. We appreciate the efforts by this Committee to protect the current program over the past several years when high foreclosure rates and questionable VA management techniques have resulted in the necessity of significant supplemental appropriations.

We agree with your assessment of S. 1158. If enacted, it would enhance the loan guaranty program for veterans, maintain the program's solvency, and reduce its dependence on the funds of taxpayers without jeopardizing the basic program goals. We believe your bill would keep the concept of a "benefit program" intact.

As you have pointed out, this legislation is substantially similar to H.R. 1415. In addition to those provisions in S. 1158 that are identical to H.R. 1415, we are pleased to support several of the other revisions you have included in your bill.

PVA agrees with your theory that larger downpayments should reduce the likelihood of default by increasing the buyer's equity in the home. As you know, H.R. 1415 provides for a decreased indemnity fee (0.75%) for buyers who make a 5 percent downpayment. Your bill would further reduce the fee to 0.25% for those who are able to make a 10 percent downpayment. We support this provision but believe it should be closely monitored during the early years of the program. We want to make certain that veterans are not over-extending themselves in order to save 1 percent in fees (which can be financed over the life-time of the loan) by making a downpayment of 10 percent. With that exception, we believe this initiative will benefit the program by reducing defaults and saving the Government the cost of these loans.

PVA also supports your provision to require the DVA to pay, in addition to the regular contribution of 0.25%, the fee which is waived in the case of a veteran with a service-connected compensable disability or a surviving spouse of a veteran who died from service-connected disability. We believe it is better to start the program out this way and then, if it is determined that the Home Loan Guaranty Fund is sufficiently solvent, make appropriate adjustments. It is critical that the program gets off to a good start. By building up the guaranty fund resources, the program will be better prepared to accommodate any unforeseen increases in the number of defaults.

Regarding loan fees for assumptions, PVA would prefer to keep the 0.50% fee as expressed in H.R. 1415 and not provide indemnification for the assumptor. Although S. 1158 would increase the fee for those assuming DVA loans and thereby increase the fund resources, we are not convinced that the indemnity benefit should be extended to those who are not eligible veterans and service personnel.

For those assumptors who are veterans or service personnel, we believe indemnification should be provided when their entitlement is substituted for the original veteran's entitlement. In all other cases, unless it proves to be a significant source of funding essential to the solvency of the program, we prefer that this provision in your bill be modified to exclude non-veterans.

S. 1158 authorizes the Secretary to increase all loan and assumption fees uniformly to not more than 20% more than the statutorily prescribed percent. Such increases must be based on a Secretarial determination that the guaranty fund would otherwise become insolvent within 24 months after the proposed increase would take effect. Your provision requires other checks and balances as well including reviews by the Committees on Veterans' Affairs and the Congressional Budget Office.

Although we have no objection to the intent of this provision which is to identify problems on a timely basis and react to them in time to keep the program solvent, we firmly believe that loan and assumption fees should be raised and lowered by legislation. We will comment further on this in the conclusion of the Home Loan section of this testimony.

Unlike H.R. 1415, your bill would deny indemnification to borrowers who default as a result of circumstances not beyond their control. PVA does not take a position on this provision at this time. We are not certain how the DVA may define "circumstances not beyond one's control." This could be done very liberally to include DVA micro-management of a veteran's financial affairs. We are not suggesting that this would be the Department's intent, however, we would like to see what specific circumstances, similar to the list of mitigating circumstances described in DVA education programs, that would result in the denial of indemnification.

As we stated in our discussion of H.R. 1415, we support the provision in that bill which authorizes the sale of vendee loans with or without recourse, but only if the cash proceeds received at the time of sale is equal to an amount not less than 90 percent of the unpaid balance of the loan. We believe that such a provision ensures that non-recourse sales can be made only if the DVA obtains fair value for the loans. This provision would prevent the sale price from being substantially discounted from the price the DVA could obtain for a sale of the same loan with recourse.

As you pointed out, there may be nothing inherently wrong with non-recourse sales although the House bill does, in fact, effectively prohibit loan asset sales without recourse by requiring a 90 percent return on such sales. May we suggest that non-recourse sales would be more realistic if the DVA was required to receive no less than 85% of the unpaid balance of such a loan - similar to the percent of par the Department received at the time of its latest non-recourse sale on March 23, 1989.

PVA strongly supports your provision and the provision in H.R. 1415 which would change the way loan asset sales are scored for budget purposes. As you know, due to the accounting rules under the Administration's credit reform, selling loans with recourse is now treated as borrowing rather than as an offsetting collection. The Administration, therefore, claims the Government can "save" $500 million by selling loans without recourse even though the DVA may receive less money for such sales.

Mr. Chairman, your bill would require that proceeds of all sales of loan assets, whether with or without recourse, be counted as offsetting collections. We believe this section of your bill would properly change what is currently a rather questionable accounting practice in terms of realistically assessing what is in the best interest of veterans and the program.

Regarding the next section of your bill, PVA agrees with you that in many areas of the country the present maximum guaranty of $36,000 is insufficient to reflect the realistic cost of housing. Your bill would allow a veteran to purchase additional loan guaranty entitlement by paying 0.1% for each additional $1000 up to a maximum of $10,000. This would result in a maximum DVA loan of $184,000 without a downpayment.

In assessing this provision of S. 1158, we assume that the purpose of the initiative is distinct and different from that which would be served simply by increasing the loan guaranty amount by $10,000. This provision would be utilized on a loan by loan basis and would be used only by those veterans and service personnel who actually need it to purchase a home in an area where housing costs are very high.

PVA is very reluctant to start down the road of a new category of fees. We appreciate the fact that different areas of the country reflect different needs concerning sufficient DVA guaranties. We are concerned, however, about the precedent these new fees would set for future adjustments in the maximum guaranteed loan amounts, even though the intended purpose of these provisions is different.

We respectfully suggest that the fee be excluded from this provision and the eligibility for increased guaranty be based on other factors which would reflect geographic areas where housing costs are unusually high. This may be done in a manner similar to section 2 of S. 1092 which provides different hourly wages for work-study students depending on the minimum wage scales in the student's state.

We strongly support that section of your bill which would require lenders to notify the DVA when the lender refuses a veteran's partial payment on a DVA guaranteed loan. Your bill would further require the lender to state the circumstances of the veteran's default and the reasons why the lender refused partial payment. Veterans who may be delinquent in their mortgage payments, yet are able to tender a partial payment, represent the most likely candidates for a successfully cured loan. Lenders and the Department must do everything in their collective power to prevent loans from foreclosure. The area of loan servicing represents one of the most critical aspects of the program.

It is quite apparent that the loan servicing presently being provided by the Department and the lenders is entirely inadequate. We believe your provision to require lenders to identify those veterans for whom the acceptance of partial mortgage payments has been refused will help the DVA tremendously in their effort to target individuals who will benefit by the DVA's loan servicing.

PVA supports the extension of the present "no-bid" formula by which the DVA determines whether or not it will acquire a property at the time of foreclosure. As you have pointed out, the DVA intends to implement regulations on August 1, 1989, which would change the formula by including the Government's cost of borrowing funds in this determination. PVA strongly opposes the Department's planned implementation of such regulations.

As you know, PVA has supported H.R. 1415 which extends the original "no-bid" formula and specifically excludes any imputed interest costs. Mr. Chairman, your bill would require the DVA, when considering whether to acquire a foreclosed property, to consider half of the amount by which the imputed interest cost of the funds necessary to buy the home exceeds the imputed interest cost of paying the guaranty. This appears to be a precise method by which the DVA could best determine which course of action to take.

Our only concern is that by including part of the cost of borrowing, fewer properties will be acquired by the DVA and other forms of loans, such as FHA and conventional loans, may then represent more attractive investments for lending institutions. Having said that, however, we can accept either your provision concerning "no-bids" or the provision contained in H.R. 1415.

S. 404 - A Bill To Extend Certain DVA Home Loan Guaranty Program Provisions

As expressed in our discussion of H.R. 1415 and S. 1158, PVA endorses the elimination of the present one percent funding fee in concert with the enactment of legislation establishing an "indemnity fee". We support the proposed enactment date of S. 1158, which is October 1, 1989.

Regarding the proposed extension of the "no-bid" formula, please refer to our comments on section 5 of S. 1158.

S. 898 - The "Veterans' Housing Amendments Act Of 1989"

PVA is pleased to comment on the provisions contained in S. 898, a bill proposed by the Department of Veterans Affairs.

We support section 2 of the bill which addresses the requirements related to refinancing loans guaranteed under title 38, USC. Current law limits refinancing loans to 90 percent of the appraised value of the home. The purpose of such a limitation is to discourage the refinancing of a loan simply for the purpose of cashing out equity in the home. The current law applies to all refinanced loans.

The Department has correctly pointed out that many refinanced loans are not for the purpose of equity payouts. Instead, such loans are used primarily to replace less favorable types of financing with a DVA loan. The Department has identified three specific situations where it believes loans should be guaranteed without regard to the 90 percent limitation: (1) a construction loan, (2) an installment land sales contract and (3) a loan obtained by a previous owner of the property which was assumed by the veteran, provided such loan is at a lower interest rate than the loan being refinanced. PVA is pleased to support this provision.

Regarding the sale of vendee loans, we oppose section 3 of the Department's bill. Please refer to our comments concerning vendee loans in our discussion of H.R. 1415 and S. 1158. Likewise, we oppose section 4 which proposes an extension of the loan funding fee.

Section 5 of the Department's bill repeals certain requirements in the manufactured home loan program. Essentially, it relaxes certain standards to which the DVA must conform regarding environmental/scenic conditions and inspections of manufactured homes. The thrust of the Department's argument appears to be that such standards and inspection requirements only serve to duplicate existing HUD and State/local requirements.

PVA can support this provision if scarce DVA resources are presently being used in an effort which results in duplication. If this provision is enacted, we believe the Department should closely monitor the results of regulations imposed by HUD, local governments, and lenders in the absence of direct DVA involvement.

Section 6 of the bill also addresses an issue which the Department believes is sufficiently covered by Federal, State and local laws. The provision would eliminate some certification requirements regarding the feasibility of water and sewage systems as a condition to the DVA guaranty of loans for the purchase of newly constructed homes. Once again, we believe that the prioritization of scarce funds should certainly be considered when determining whether or not such certifications are actually necessary. Although we are not certain how this provision would ultimately affect the veteran home buyer, we believe that any relaxation of certification requirements and inspection standards (as discussed in the previous section) should be cautiously pursued and followed-up with thorough oversight.

PVA opposes the Department's provision concerning offsets of tax refunds for housing loan debts. Until such time as legislation is enacted which would reflect all of the concerns in H.R. 1415 and S. 1158 regarding home loan debts and waiver requirements, we stand opposed to this expansion of debt collection under existing law.

PVA also opposes the Department's proposal to implement a 180 day time limit for filing a request for waiver of debt in a home loan case. A veteran's right to file a legitimate waiver request must be protected regardless of the time that passes after the notice of debt. There are far too many circumstances which may cause a veteran to go beyond the proposed six month filing dead-line. We believe that title 38, USC., should continue to exclude the imposition of time limits for filing waiver requests on home loan debts.

PVA supports that portion of section 9 of S. 898, which clarifies certain language regarding veterans and active duty personnel. The amendment, however, includes the intent that active duty personnel would be subject to a time limit for filing a waiver request in the case of a home loan debt. As we stated above, PVA opposes such a limitation.

PVA opposes section 10 of the Department's bill. Please refer to our statement concerning H.R. 1415 and S. 1158.

Conclusion

There is no question that over the past decade veterans have been asked to pay more and more in the form of fees, contributions, and co-payments toward various benefit programs and health care. We believe this trend should be carefully monitored and, to every extent possible, reversed. This Committee and the Congress have always made certain that those men and women who have served our country are returned to a society in which they can compete both educationally and financially with their non-veteran counterparts. For the sake of a program, it is occasionally necessary for a veteran to contribute to the overall well-being of the program. We must be cautious, however, that such fees and contributions do not become a "bail out" mechanism for short-sighted and improper management techniques. Likewise, we are concerned that the use of such fees and contributions will become an easy method by which deficit reduction can be addressed. PVA encourages the Senate Committee on Veterans' Affairs to closely monitor the necessity of the fees which have been proposed in today's home loan legislation and, if enacted, make appropriate adjustments as the program matures.

Once again, PVA thanks the Committee for the time and effort that you have invested in the Senate bills before us today. S. 1158 properly addresses many of the problems that besiege the current DVA Loan Guaranty Program. Your commitment to the long term solvency of the program is sincerely appreciated by our members.

S. 1153: The Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989

This legislation would:

1. Provide temporary disability benefits for Vietnam veterans suffering from non-Hodgekin's lymphoma or soft-tissue sarcoma. The benefits, including dependency and indemnity compensation for the survivors of these veterans, would extend through April 15, 1992; at which time, the House and Senate could vote, in an expedited manner, on whether or not these benefits should be extended, terminated or made permanent.

2. Establish a permanent presumption of service-connection for chloracne in Vietnam veterans whose chloracne became manifest within one year of their service in Vietnam.

3. Provide a mechanism under which the Department of Veterans Affairs, based on the results of a biennial independent literature review conducted by the National Academy of Sciences (NAS) or similar agency, must determine what diseases, if any, could be associated with exposure to Agent Orange or other toxic substances in Vietnam for the purpose of warranting permanent service-connected disability compensation.

4. Require the Department to gather, analyze and report, on a continuing basis, on clinical data from the health records of Vietnam veterans to assess any correlation between exposure to herbicides, toxic substances, or Vietnam service in general with related disabilities or disorders.

5. Establish a tissue archiving system of voluntarily contributed blood and tissue samples to facilitate future research; fund appropriate independent studies to determine whether or not future scientific research on Vietnam service-related disabilities is feasible; require the Secretary of Health and Human Services to submit a report on research being conducted to identify and develop treatments for exposure to dioxin and other toxic agents in herbicides.

6. Extend, through December 31, 1993, veterans' eligibility for priority medical care for otherwise unexplainable disabilities which could be associated with exposure to agent orange or ionizing radiation. The legislation would also make certain technical improvements to the DVA's outreach services related to agent orange, and improve the reporting procedures related to the on-going "Ranch Hand Study" being conducted by the United States Air Force.

Mr. Chairman, according to PVA's current national resolution, our organization strongly supports any reasonable and scientifically valid research to judge the potential effects of exposure to agent orange among the Vietnam veteran population. Cumulative research efforts to date, while expensive, time consuming and frustrating, have gone a long way in clarifying many areas of concern to thousands of Vietnam veterans worried about the potential effects of exposure to agent orange which previously had been based solely on rumor, innuendo or anecdotal evidence. At the same time, the studies have also set forward certain guideposts to point the way for additional research and analysis in several specific areas of concern which, while still speculative, fully warrant careful attention and further scrutiny.

The long-term harmful effects of exposure to most toxic substances do not manifest themselves until ten, twenty, even thirty years following exposure. To abandon or weaker the scientific quest to attempt to solve this problem now on the basis that either the science isn't adequate or that the data is not available, would be a shortsighted, serious mistake.

For this reason, PVA fully supports the provisions in S.1153 which would authorize the DVA to evaluate areas of future research on the health status of the Vietnam veteran population, as well as improve the effectiveness of on-going evaluations such as the Ranch Hand Study. In addition, we believe that the on-going analysis of the medical records of Vietnam veterans can be a very effective tool in this process, whether or not the research is seeking to find an association between exposure to herbicides and illness, or an association between Vietnam service and any grouping of disabilities, either physical or psychological, which are, or could manifest themselves to be, within the Vietnam veteran population.

The bill would extend, until 1993 eligibility for priority medical services for veterans exposed to both herbicides and ionizing radiation. We believe this extension to be mandatory to provide both a humane service for these veterans, and a tracking method to evaluate their health status. This process is also important to clarify statutory entitlement for health care at a time when the DVA is desperately attempting to recoup scarce resources by denying medical care and health services to thousands of previously eligible veterans.

By the terms of our National Resolution, PVA supports the provisions in the bill which would provide a mechanism whereby the DVA could assess the relative merits of providing disability compensation and survivors' benefits for disabilities which could be associated with exposure to herbicides based on the recommendation of a periodic scientific evidence review performed by the National Academy of Sciences or similar independent science organization. Judging the increasing volume of accumulated data covering this entire subject, we believe the Department should have the benefit of an on-going literature review accompanied by the specific advice and recommendations of an unimpeachable independent source such as the NAS to be able to make any determination on benefit eligibility.

PVA also supports the provision in S. 1153 which would establish a permanent presumption for the payment of disability compensation to Vietnam veterans with symptoms of chloracne that manifest themselves within one year of service in Vietnam. There certainly is sufficient evidence to indicate that the skin condition chloracne is a clear manifestation of direct exposure to the toxins contained in agent orange or other similar defoliants.

Mr. Chairman, PVA, at this time, cannot support the provisions contained in S. 1153 which would provide temporary benefits for Vietnam veterans suffering from non-Hodgekin's lymphoma and soft-tissue sarcoma. While there has been suggestive evidence in certain studies linking exposure to defoliants and these diseases in certain populations, giving rise to correlative suspicions, the evidence is far from clear as to this result in the cases of veterans who served in Southeast Asia.

We would like to repeat your concerns, Mr. Chairman, expressed in your statement on June 8, 1989, accompanying the introduction of S. 1153.

> "Unfortunately, we do not have a definitive answer as to whether there is an association between non-Hodgekin's lymphoma and soft-tissue sarcoma - or any disease other than chloracne, for that matter - and service in Vietnam. If we did, things would be a lot easier."

We would like to applaud you, Mr. Chairman, Senator Daschle, the principal sponsor of this legislation, and the other original cosponsors of S. 1153 for your compassion and concern in recommending that a temporary or interim method of providing compensation for these veterans be established. However, we believe the provision of such a temporary benefit based only upon a suspicion of a presumed correlation between exposure and these diseases to be unwise at this time for several reasons.

The legislation would authorize this benefit only on an interim basis until April 15, 1992. At which time, the House and Senate would have the opportunity to vote again on whether there is sufficient evidence to make the payment of compensation permanent. However, if evidence does surface during this period indicating that there is not a correlation between exposure and these two diseases, then the payment of the benefit can be re-evaluated at any point. By the terms of this legislation, the Congress would be tasked to make some very tough choices. In the spirit of compassion, do you grant a substantial benefit for a veteran suffering a catastrophic life-threatening illness, on the one hand - and then, face taking away that benefit with the other hand if science overtakes compassion at some point down the road? We believe it would be far more realistic, and far more consistent with existing procedures for the granting of compensation benefits, to allow certain announced actions and anticipated events to run their course before any unilateral decision on the provision of temporary benefits is made by the Congress at this time.

Secretary Derwinski has announced his decision to conduct a thorough review of the standards and guidelines implemented in the adjudication of agent orange claims in accordance with the recent California court decision. The results of this review should be completed in several months. At the same time, the Centers For Disease Control should release their preliminary findings in December 1989 and their final report in March 1990 on the "Selected Cancers Study" of the Vietnam veteran population. This review, hopefully, could provide one of the most definitive analyses to date of the existence of any potential correlation between exposure to agent orange, or service in Vietnam, and cancer.

S. 1153, itself, authorizes the National Academy of Sciences to review the findings of the "Selected Cancer" study as well as any and all available evidence on an on-going basis in order to make recommendations to the Department on the relative weight of cause-and-effect evidence for the purpose of granting compensation. PVA believes this is a sound mechanism to implement in order to make the granting of a permanent compensation benefit, where warranted, based upon the most reliable evidence and advice available.

Mr. Chairman, this concludes my statement. I will be happy to respond to any questions you might have.

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TESTIMONY OF SENATOR TOM DASCHLE
before the
Senate Veterans' Affairs Committee

June 22, 1989

Thank you, Mr. Chairman, for allowing me to speak today about the importance of S. 1153, the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989. I am grateful not only for this chance to testify, but also for your efforts to make this bill a reality. Your joint sponsorship of this bill, your willingness to hold this early hearing, and your commitment to mark up and report the legislation next month are all greatly appreciated.

Thanks also go to you, Senator Murkowski, the Ranking Minority Member, for your help in establishing the foundation for this legislation last year. S. 1153 embodies the essence of the bill that passed the Senate with your support last October.

There are, of course, many people to thank. First, I want to commend Senator Kerry for his diligence in the fight to provide compensation to Agent Orange victims. S. 1153 is the fourth piece of Agent Orange legislation on which he and I have worked together, and we simply could not be here without him. Senator Jeffords has played a key role in the Agent Orange debate for many years, and he and I have now worked together on this issue in both the House and the Senate. Also, I am delighted with the response we have had to this legislation from the Committee. Along with you, Mr. Chairman, and Senator Jeffords, S. 1153 is cosponsored by Senators Matsunaga, DeConcini, Rockefeller, and Specter.

I want to thank the many veterans who gave us their input on this legislation. This bill is the compilation ideas from all over the country in an attempt to provide Vietnam veterans the comprehensive package they deserve to address their needs in the areas of compensation, health care, outreach, and research. Toward this end, the help we have received from Vietnam Veterans of America cannot be overemphasized. We have also benefitted greatly from suggestions from the American Legion, Veterans of Foreign Wars, and Disabled American Veterans. Other veterans' groups and individual veterans have helped us understand the real-world consequences of Agent Orange exposure and, therefore, helped us focus our legislative efforts.

Finally, it is important to acknowledge the scientists who have supplied the technical information and expertise behind S. 1153. I am proud of our efforts to treat the science with integrity, and I am proud of this bill. While it may not please everyone on every front, it is a solid, meaningful step toward a resolution of the Agent Orange issue.

This bill is not the final word on Agent Orange. It does not go as far as I and many others would like, and there is much work still to be done. Nevertheless, it is an honest attempt to address some of the longstanding concerns veterans have had with the way the federal government has approached this problem in the past by bringing impartial experts into the decision-making process and asking Congress to accept its share of the responsibility for our government's treatment of those who fought our wars.

S. 1153 will provide interim disability compensation to Vietnam veterans or their survivors who suffer from soft-tissue sarcoma (STS) and non-Hodgkin's lymphoma (NHL) until April 15, 1992, and will provide for House and Senate votes on joint resolutions to either extend or make permanent those benefits. These interim benefits will not prejudge the regulatory process; they will extend the benefit of the doubt to veterans with two rare, debilitating diseases most frequently associated with exposure to Agent Orange.

S. 1153 will also provide for bienniel independent scientific reviews, to be conducted by the National Academy of Sciences if that organization agrees to enter into such a contract. These reviews will assess the entire body of scientific evidence related to Agent Orange and other chemicals used in Vietnam and make recommendations to the Secretary of Veterans Affairs regarding their association with diseases suffered by veterans. This provision is essential to restoring veterans' and congressional confidence in the government's Agent Orange policy.

The bill also proposes 1) an analysis of the clinical data from the VA's health records of veterans examined or treated for disabilities related to Agent Orange or Vietnam service; 2) the establishment of a tissue archiving system to facilitate future research; 3) funding of independent pilot studies to determine the feasibility of future scientific research related to Agent Orange or Vietnam service; 4) a report from the Department of Health and Human Services on research related to treatment for exposure to dioxin and other toxic chemicals used in Vietnam; 5) a three-year extension of veterans' eligibility for free medical care based on Agent Orange exposure; and 6) technical amendments to previous legislation relating to VA outreach and reporting procedures regarding the Air Force's Ranch Hand Study.

I understand that some in Congress and the Administration would prefer that the compensation issue wait until the VA writes its new regulations in response to the recent court ruling striking down the VA's 1985 Agent Orange regulations (pursuant to PL 98-542). Some are also concerned that the independent scientific review procedures outlined in the bill would somehow interfere with the VA's process.

In my view, those concerns are not justified. This legislation has been several years in the making. Although I am as pleased as anyone about the federal judge's ruling and Secretary Derwinski's courageous decision not to appeal that ruling, I have been working on this issue long enough to know that the Agent Orange problem extends far beyond one agency's set of regulations to implement one piece of legislation. This bill was drafted not only because the VA under the previous Administration was interpreting a 1984 law too narrowly, but also because there is a legitimate need for an independent, apolitical mechanism for dealing with the complex, controversial scientific issues in this debate.

In the specific case of interim benefits for STS and NHL, compensation for these diseases is long overdue. Last October, when the Senate passed the Daschle-Kerry-Cranston amendment to the veterans compensation bill, we finally got one step closer to this goal. Now is not the time to abandon these veterans. This bill does not give STS or NHL veterans permanent benefits -- something I wholeheartedly believe they deserve, and something I have proposed in past legislation. In the spirit of compromise, and in deference to the VA, we have agreed to offer only interim benefits to these veterans. During that interim period, both the VA and the National Academy of Sciences will have an opportunity to make recommendations on whether or not to make those benefits permanent.

On the question of whether or not the National Academy of Sciences review will interfere with the VA's rule-making process pursuant to PL 98-542, the answer is simple. It will not. The Secretary has made clear that he intends to promulgate new regulations by October, and, for that, he is to be commended. Our bill in no way affects that rule-making process. Our bill simply adds another mechanism for receiving scientific input and making decisions that will begin after the initial independent scientific review. The two processes are not mutually exclusive, and our bill does nothing to alter the work of the VA Advisory Committee on Environmental Hazards in relation to PL 98-542 or its new regulations.

The Secretary and I have spoken about this matter, and I believe we understand each other. He wants the new Department of Veterans Affairs' first Agent Orange decision to be one of integrity and compassion. I applaud the Secretary's leadership in this area and add that it is an extremely welcome change. I have nothing but praise for the way the Secretary has handled this issue in an atmosphere that has not always been conducive to even-handed discourse, and I want to work with the Secretary -- both during the rule-making process and the legislative process -- to ensure that Vietnam veterans concerns are addressed. But Congress does have a role to play, and that is my purpose in proposing this modest legislation.

At times like these I am reminded of the POWs still missing in Southeast Asia. Agent Orange victims are prisoners of war, too. It's just that their prisons look different. Their prisons are constructed of the excuses the government has made to justify its ten-year denial of compensation to those veterans -- the scientific and legal technicalities they've used to make a simple issue of fairness seem like a complex web of unanswerable questions. And the prison doors have remained shut. But there is reason for hope. A federal judge has confirmed what we've always said -- that Agent Orange victims have been cheated. And the new Secretary of Veterans' Affairs has pledged to look for an honest, uncomplicated answer. It's time to free Vietnam veterans from their bondage and free the government from its untenable position. That's what this bill is all about.

I have worked on this issue for ten years, through times of both high and low public and congressional interest -- not because it was politically expedient, but because it was the right thing to do. It still is, and I hope the Committee will report S. 1153 as expeditiously as possible.

Thank you again, Mr. Chairman, for this opportunity to testify.

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STATEMENT OF

VIETNAM VETERANS OF AMERICA, INC.

Presented by

RICHARD E. O'DELL
NATIONAL VICE PRESIDENT

and

PAUL S. EGAN
LEGISLATIVE DIRECTOR

before the

SENATE VETERANS AFFAIRS COMMITTEE

on

AGENT ORANGE AND HOME LOAN GUARANTY LEGISLATION

JUNE 22, 1989

Mr. Chairman and members of the Committee, the Vietnam Veterans of America, Inc. (VVA) appreciates this opportunity to present its views on legislation designed to address the issues of Agent Orange and the Department of Veterans Affairs' (DVA) home loan guaranty program. Each of these issues are and have been pressing for quite some time and each is in need of long overdue serious attention.

AGENT ORANGE

In the cases of those veterans having been exposed to dioxin, the principal contaminant in Agent Orange, or other toxic herbicides during military service in Vietnam or elsewhere, progress toward either providing disability compensation or ascertaining any measure of certainty as to the likely effects of exposure has been grindingly slow. Until very recently, the DVA has turned both a blind eye and a deaf ear toward any suggestion that dioxin is connected to more than one disease. The DVA has also refused to concede any elevated morbidity or mortality rates in exposed veterans.

The long history of the DVA's approach to this issue has built up an enormous reservoir of mistrust and cynicism among Vietnam era and other veterans toward the agency. This mistrust and cynicism has been well earned and can be expected to endure for quite some time to come. The recent decision by DVA Secretary Edward J.Derwinski not to appeal the ruling in the VVA's lawsuit stands as perhaps the first positive note from the agency on this issue in over a decade. That being so, and as magnanimous as the Secretary's decision genuinely was, reliance now on the DVA to write dispassionate and fair new rules governing compensation under P.L. 98-542 cannot serve as a substitute for legislation.

S. 1153

At the outset of any discussion of the legislation, S. 1153, introduced on June 8, 1989 to begin, among other important things, providing disability compensation for diseases associated with Agent Orange or other toxic herbicides, it is appropriate to state the fact that this legislation is a compromise resulting form several months of negotiations. Senators Daschle, Kerry and Jeffords are to be commended for their tireless efforts not only on this compromise bill but also for their perseverance over many years in keeping this issue alive and in the public spotlight.

Necessarily, as a compromise bill, the legislation has a few weak spots. In some areas it may go about as far as it can, but in others it fails to go far enough. For example, this legislation allows for only interim disability benefits for non-Hodgkins lymphoma and soft tissue sarcoma. These disability compensation benefits should be permanent.

A further component of this bill that makes it a compromise is the limitation in it on the number of diseases for which disability compensation would be granted -- interim compensation or otherwise. We believe it is fully appropriate to afford presumptions for diseases associated with suppression of the immune system and lung cancer within a certain period following departure from Vietnam. A mechanism to afford benefits for the children with birth defects of these veterans also should be in order.

We note here that the scientific panel charged in the bill with responsibility for reviewing the science will be weighing the evidence of a connection between exposure and non-Hodgkins lymphoma and soft tissue sarcoma. Once the evidence is reviewed, a recommendation will be made to either grant permanent benefits for veterans with these diseases or to suspend benefits. The same mechanism could very easily provide disability benefits now for added diseases pending the outcome of the scientific review.

This legislation offers an expedited procedure guarantying House and Senate votes to either extend or make permanent these compensation benefits at any time after January 1, 1992. However, until the benefits are made permanent, the same benefit of reasonable doubt will continue to be withheld from those exposed to Agent Orange that was extended just last year to veterans with any of 13 diseases associated with exposure to ionizing radiation.

Apart from the issue of granting interim disability compensation to veterans suffering with either of the two diseases named in the bill, the heart of this measure would establish a mechanism for an unbiased nongovernmental review of the science for the purpose of ascertaining what reasonably can be concluded from the science about the connection between other diseases or disabilities and Agent Orange or other toxic herbicides used in Vietnam. This particular part of the bill intends to put in place a means for adding disabilities in the future to the list of those for which compensation can be granted.

Just as this is the heart of the bill, it necessarily is that part deserving the greatest care in legislative draftsmanship. The instructions provided in the bill to the National Academy of Sciences (NAS) as to how the science should be weighed in determining what diseases have a positive relationship to exposure must be clearly understood by all who participate in the NAS review. It must, above all else, be understood by the NAS that their review of the science does not require strict cause and effect relationships between exposure and disease in order to make a finding of a positive and therefore compensable relationship. In this connection, we urge the Committee to assure itself that the NAS is clear on the requirements of this bill and that the definitions used in it are commonly understood where the science is concerned. Without some assurance that the instructions and the intent of this bill are clear, amendatory language and a report accompanying the legislation should be used to clarify Congressional intent.

We make these comments on this part of the bill because we feel strongly, based on the historic implementation of P.L. 98-542, and other Agent Orange projects, that it would be mistaken to leave anything to bureaucratic discretion. At best, the marriage of scientific projects to legislative draftsmanship is an uneasy one. While we commend the workmanship on this particular bill in taking great pains to develop a workable product, each of us with a stake in this issue must continue to be willing to make added adjustments in the interest of clarity and of purpose.

Another of the sections in this measure would require the DVA to evaluate on a continuing basis the data it already has at its disposal on the medical problem alleged to be associated with dioxin exposure for which treatment has already been rendered. It is puzzling that the DVA has never voluntarily undertaken such an evaluation. For several years the DVA has provided treatment on a priority basis to veterans claiming their problems are associated with exposure to dioxin. Yet, it has apparently escaped the DVA's attention that assembling and evaluating the medical data generated by treatment provided to these veterans might offer a contribution to what is known about potential associations between exposure and disease. For example, we would be very interested to know what if any patterns of diseases or disabilities might have appeared in these veterans. Moreover, the VVA also supports the provision in the bill to further extend the DVA's authority to provide medical care to veterans based on dioxin or radiation exposure.

The legislation also authorizes the establishment of a tissue archives consisting of blood and tissue samples voluntarily provided by veterans in order to allow for future research. The VVA supports this part of the bill as a way of systematically preserving evidence of exposure that can be used in the future for a variety of ongoing scientific examinations.

Another of the bill's provisions would require the Secretary of Health and Human Services (HHS) to submit a report on research being conducted to develop treatments for exposure to dioxin or other toxic herbicides. This particular provision is well advised since treatment of these exposed veterans is every bit as important as compensating them for the disabilities they sustained as a result of exposure.

Similarly the committee may wish to add a strengthening provision to the bill which would require the DVA to specifically advise exposed veterans and their families of the possible medical risks they may face as a result of dioxin exposure. Alerting these veterans and their families of possible medical problems that may arise could offer some assurance as to what is and is not likely to result from exposure.

Mr. Chairman, the VVA, having worked closely with some of its principal cosponsors, supports this legislation and urges the Committee to move forward with it as soon as is practicable. Under the circumstances, we appreciate the Committee's continued willingness to revisit this issue. It is our sincere hope that this or some stronger version of it will be enacted. In this connection, it is most certainly hoped that whatever is cleared by the Congress will actually accomplish its advertised goals. The Agent Orange issue overall has been around for far too long without any meaningful beginning to a resolution. The legislation under consideration today offers the prospect of just such a beginning. The veterans who rely on the Congress for a meaningful resolution to the Agent Orange issue deserve some assurance that this latest legislative effort will be both serious and substantive.

HOME LOAN GUARANTY

Mr. Chairman, in recent years it has been stated repeatedly that the DVA's home loan guaranty program is facing serious problems not only with the solvency of the Loan Guaranty Revolving Fund (LGRF) but with the adequacy of the program's administration. Ranging from the need to infuse the LGRF with billions of new dollars just to keep it afloat, the failure of the DVA to adequately market its inventory of foreclosed properties to the problems besetting veterans subject to deficiency actions by the agency, this program has reached a crisis point which in our view is threatening the willingness of the Congress to retain this benefit program for much longer absent serious reforms.

Added to these problems, we add one further problem that seems to have been given too little attention. Put simply, this program is becoming increasingly out of practical reach for first-time home buyers as the general housing affordability crisis continues to exclude more and more buyers from the real estate market. With this in mind, we have to wonder what the value to consumers of this program will be even if remedial legislation completely solves all of the fiscal and administrative problems without any serious attention to housing affordability.

Generally speaking, the VVA has subscribed to the views expressed by the Non Commissioned Officers Association that the most appropriate way of restoring this housing program's fiscal integrity is through recapitalization. The LGRF should most appropriately be refinanced through a rebuilding of its income-generating portfolio of home loans.

We also believe strongly that the DVA ought to be given sufficient authority to move aggressively toward rebuilding this portfolio. The means for doing this, among others, might require a more vigorous direct loan program along with less deference to the proprietary interests of bankers when choices are made following default as to whether the guaranty should be paid (the less expensive option) or whether the DVA should simply acquire deed to the property by paying off the entire balance of a mortgage. By paying off the guaranty, the banks are freed from the risks they should have contemplated when the original mortgage was approved. Added to this, when the DVA acquires deed to the property the defaulting veteran is typically saddled with a larger obligation to the DVA than would have been the case if the guaranty had been paid instead. Under the circumstances, it is tempting to contemplate the justification -- in the absence of any apparent risk to the lending institutions -- for the fees lenders collect from home-buying veterans for the privilege of transferring market risk to the veteran and the taxpayer.

While we are supportive of recapitalization, we are realistic enough to conclude that recapitalization is a possibility beyond the realm of likelihood given the current fiscal crisis facing the nation. Similarly, adopting an aggressive direct loan policy is unlikely given the charges of competition with the private sector that such a policy might invite. Nevertheless, there is good reason to advance such a proposal since it would place the interests of the intended beneficiaries of the program, the veterans, ahead of the proprietary interests of bankers, builders, realtors and appraisers.

The first such proposal was raised some years ago by The American Legion. At that time it was assumed that lenders were sharing risk in the marketplace and that they might be interested in reducing their risk by receiving increased guarantees in exchange for mortgage interest rates below the maximum DVA rate. This assumption apparently proved false. Another serious proposal would allow the DVA to borrow from the Treasury at the discount rate and make direct loans to first-time home buying veterans at or something below the maximum DVA rate. In this way, the veteran buyer could be made free to deal with sellers directly and be further spared from the lenders' fees. For the DVA, this would provide an avenue through which to rebuild its loan portfolio. Such an addition to the home loan program could be modeled after the successful Cal-Vet program operating in California. Nothing in this particular proposal would necessarily disturb the continued availability of this program in its current form for second-time and subsequent users of the DVA program.

The legislation under consideration today, particularly HR. 1415 and S. 1158, in our view represents a response to the culmination of problems besetting the program for years. Whether this response is sufficient remains to be seen. Nevertheless, the early 1980's brought with them record foreclosure rates that continue at unacceptably high levels to this day. Accompanying these foreclosure rates, a short-sighted policy of funding interim budget deficit savings by selling off the home loan portfolio was put into place. Initially, the foreclosure rates were attributed to the deep recession of the early 1980's. The continuation of high foreclosure rates well beyond the recession suggest more fundamental problems in the real estate industry today.

We have also seen the imposition of user fees for those wishing to take advantage of the program. First it was a half percent, the proceeds of which were directed to the Treasury. The half percent became one percent, the proceeds of which were redirected to the LGRF. In the meantime, we have seen unsuccessful proposals to impose negotiated interest rates and adjustable rate mortgages on veteran users. In each of these proposals, those that have been enacted as well as those that have not, paying the cost of either reducing the deficit or bailing out the program has always been directed toward the veteran user; the only beneficiary with no proprietary interests in the program.

To a greater or lesser extent, the legislation under consideration today would replace, either in whole or part, the user fee with a mortgage indemnity fee. To the extent that up-front expenses to the veteran will actually purchase something of value, this is a major improvement and, as such, we are cautiously supportive.

In both the House and Senate bills, any veteran disabled to a degree of 10 percent or more would be exempt from the new fee but still reap its benefits if needed. We suggest that only veterans rated 30 percent disabled or more should be exempt from the fee and we further believe that first-time home buyers should also be exempt. On this latter point, we feel so strongly that first-time home buyers should be exempted that we would have no objections to further elevating fees for second-time and subsequent users in order to recoup the cost of a first-time home buyer exemption. Another way of offsetting the cost for a first-time buyer exemptions would be to impose fees on those with proprietary interests in the program.

As difficult politically as this latter alternative may be to accomplish, it certainly is worthy of consideration. This is because, apart from the recession-induced foreclosure rates of the early 1980's, an additional reason for continuing high foreclosure rates is that bankers, builders, realtors and appraisers have no compelling disincentives from qualifying veterans for properties they cannot afford. These are the parties to the program that, after all, have been able to make handsome profits whether or not the buyer ultimately defaults.

It is understood that in today's real estate market, there have been ever escalating pressures to find creative ways to make housing affordable to middle and moderate income individuals. Property values have skyrocketed out of range for most, at least as defined by the old rule of thumb holding family mortgage expenditures to a maximum of 25 percent of net monthly income. To accommodate this pressure, property values have arguably been permitted to escalate artificially in the presence of creative financing mechanisms.

For example, the traditional 30 year mortgage has given way to 40 years. Fixed interest rates have given way to graduated and adjustable rate mortgages. How many more creative methods remain to be developed is an open question, but the apparent goal in each is to find ways of making the unaffordable, affordable. Those who are hurt and will continue to be hurt by these financing methods are the moderate income families and individuals who have no other way into the market but are susceptible to the lure of purchasing unaffordable properties. Whether something needs to be done about this is a question deserving of serious national policy-maker consideration and not just within the veterans community. Additionally, if nothing is done, our tax system will continue to develop wide vistas between a property holding, tax advantaged, class and those who are propertyless with no tax advantages.

According to a relatively recent newspaper article in the Washington Post, the latest popular device is equity sharing in which an investor puts up the down payment and closing costs while the inhabitant pays the monthly mortgage. For awhile this may further allow moderate income families to enter the real estate market, but there is no way of knowing for how long. This is because unaffordable mortgage payments, adjustable rate or otherwise, can be just as unaffordable with or without an investor's down payment. Today's first-time home buyer may very well barely qualify for a mortgage, but if just one credit card becomes overextended, the risk of default on the mortgage can be expected to sharply increase. The margin for error in the typical first-time home buyer's family budget today has become so slim that it is no wonder that foreclosure rates remain high.

This statement has digressed somewhat from the generic subject of the legislation at hand but there is a relationship nevertheless. Today the DVA program continues as a no money down program. However, this fact clouds the additional fact that the current rule of thumb is that even without a down payment approximately 5 percent is needed to cover a veterans closing costs. Lacking that amount, it makes little difference whether or not the program has a no down payment feature. In the legislation at hand, we have now apparently reached a point at which we are willing to discuss and even encourage a departure from the program's no money down feature by reducing fees in exchange for down payments.

While it is true that this particular feature makes the program more beneficial than the FHA program that requires a down payment, the question remains as to whether we are providing the degree of benefit to veterans that was originally established as a readjustment program benefit many years ago. Because this program is currently easier to use than the FHA program doesn't mean that it will be in the future. If the veteran's closing costs are roughly 5 percent of purchase price, and if the veteran opted under the legislation's formula to reduce the indemnity fee by making another 5 to 10 percent down payment the actual down payment will have been 10 or 15 percent by the time the sale is closed. Under these circumstances, why bother with the DVA program? Why not go conventional?

With this in mind, we encourage the subcommittee to explore ways to make the program easier and less costly to use for first-time home buyers and for those veterans with disabilities compensable at a level of 30 percent or more.

In conclusion, Mr. Chairman, we are supportive of the legislation at hand, albeit reluctantly supportive. Realism, under the current fiscal circumstances, makes it irresponsible to discard the clearly needed remedial approach the proposed measures take. We do believe, however, that now is a good time to begin asking some rather searching questions of those with a proprietary interest in the DVA's loan guaranty program. Moreover, we strongly encourage this Committee, along with the other housing committees in the Congress as well as the tax writing committees, to take a bold look at where current trends in the real estate market are taking the nation and what the resulting hazards of a continuation of current trends might hold for moderate income taxpayers, veterans and non-veterans alike.

June 22, 1989

TESTIMONY OF SENATOR JOHN KERRY ON AGENT ORANGE LEGISLATION

Thank you Mr. Chairman for giving me this opportunity to appear before your committee and to say a few words about S.1153, The Veterans' Agent Orange Exposure and Vietnam Service Benefits Act.

I want to begin by expressing my gratitude to Senator Tom Daschle for his tireless work on this issue. We have been partners in this effort for the past three years and were it not for his commitment we would not be at this point today.

I would also like to thank my esteemed colleague Senator Alan Cranston, who as Chairman of the Senate Veterans' Affairs Committee, has provided invaluable assistance on this issue. As he did last year, Senator Cranston has joined Senator Daschle and I in introducing the bill.

I am extremely hopeful that, as it did last year, the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act will pass the Senate in 1989. The legislation provides interim disability compensation for veterans with two diseases contracted in Vietnam as a result of exposure to Agent Orange, non-Hodgkin's lymphoma and soft-tissue sarcoma.

As you know, Mr. Chairman, veterans have had a long road home from Vietnam. Many of them have struggled. Many were not welcomed home from the war. Many suffered prejudices and stereotyping. Some Americans chose to blame veterans for the war. Some Americans treated them as outcasts. Some regarded veterans crazies and losers. But most Americans, sadly, just ignored the veteran.

Over the past few years, many of those attitudes have changed. And that is good. But there are still wounds which have not yet healed -- wounds caused by government indifference surrounding the issue of Agent Orange.

For far too long the institution of this government that is supposed to be the advocate for the veteran has been unwilling to address the issue of Agent Orange in a positive way. That may be changing too. The decision by Secretary Derwinski not to appeal the recent court decision overturning the government's Agent Orange compensation regulations is extremely encouraging.

Mr. Chairman, I know there will be some who will question the need for this legislation. Some will continue to maintain that there is still not enough evidence.

There have been numerous studies relating to dioxin and Agent Orange already. There, undoubtedly, will be more. However Vietnam veterans resent being told to continually wait for "one more study."

It is not fair to make Vietnam veterans or their families wait any longer for disability compensation while they are suffering from cancers and other diseases caused by Agent Orange.

We cannot ask the parents of a child with birth defects to wait for another study when they know that the birth defects are due to Agent Orange.

We cannot ask a father who may be dying of cancer due to Agent Orange to wait because the next study may prove what he already knows. He is not worried about himself. He is not trying to trick his country: he is simply trying to provide security for his family.

Most of the men I've talked to - men like Jim Kilroy and Joe Campell, Vietnam veterans from my home state of Massachusetts, are not really worried about themselves. These men are painfully suffering, but their concern is not for themselves but for their families. Their concern is after they're gone, who is going to pay for the mortgage? And who is going to pay for the kid's education? And who is going to put food on the table? Compensation for men like Jim Kilroy and Joe Campell is simple justice.

There will always be questions about Agent Orange. There will always be doubters and skeptics. But for the veterans and their families who are suffering, we cannot wait any longer.

I favor continued research into Agent Orange, but we can't wait another 15 years for evidence that may never be conclusive. I think it's time - well past time - to provide disability compensation to the veterans who suffer from Agent Orange related diseases.

The disability benefits for Vietnam veterans suffering from non-Hodgkin's lymphoma and soft-tissue sarcoma will be provided on an interim basis through April 15, 1992. By that date the Center for Disease Control will have issued its final report on Agent Orange. We have included a new provision in this year's bill that will guarantee House and Senate votes on a resolution, introduced after January 1, 1992, either to extend or to make the benefits permenant. The votes will occur under expedited procedures.

Perhaps the most important addition to this year's legislation is the requirement that the Department review the scientific literature of Agent Orange and other toxic chemicals. The legislation provides a mechanism under which the Department of veteran's Affairs must determine, based on the biennial scientific review covering all germane evidence, whether permanent disability benefits should be given to veterans with soft-tissue sarcoma, non Hodgkins lymphoma or any other disease determined to have a positive assiociation with exposure to Agent Orange or other toxic chemicals used in Vietnam. The National Academy of Sciences (NAS) will conduct the reviews unless it declines to do so. If it does so decline, the Office of Technology Assessment will be approached to conduct the reviews.

We can never give back to the Vietnam veteran what he gave to this nation. All we can hope to do is to give him justice. And the time for justice is now.

Finally, Mr. Chairman, I would like to take this opportunity to thank the several veterans' organizations with whom we have worked. Among these are Vietnam Veterans of America, the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the National Vietnam Veterans Coalition, the Military order of the Purple Heart, Jewish War Veterans, Vietnam Veterans Agent Orange Victims, the National Association of Agent Orange Survivors, and Veterans' Affairs. During the last three years Senator Daschle and I habe worked closely with these organizations. Some, I am sure feel that the legislation goes too far; others feel that it does not go far enough. But we believe that the legislation represents a reasonable compromise and an important victory for the victims of Agent Orange.

Statement of

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by

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and

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NATIONAL ECONOMIC COMMISSION
THE AMERICAN LEGION

before the

COMMITTEE ON VETERANS AFFAIRS
UNITED STATES SENATE

on

HOME LOAN GUARANTY, AGENT ORANGE LEGISLATION AND VA SECURITY

JUNE 22, 1989

STATEMENT OF RICHARD S. CHRISTIAN, DEPUTY DIRECTOR
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE COMMITTEE ON VETERANS AFFAIRS
UNITED STATES SENATE
JUNE 22, 1989

Mr. Chairman and Members of the Committee:

The American Legion appreciates this opportunity to offer comments on the issues of Agent Orange, Home Loan Guaranty Program and the VA Security Service.

We will first address the Agent Orange legislation that has been scheduled for deliberation today.

Mr. Chairman, The American Legion is appreciative that you have scheduled hearings on this issue which is of such extreme importance to Vietnam veterans and their families. It is frustrating for those of us who represent Vietnam veterans to try to explain to them, and their families, why it has taken so long to determine the long-term health effects of exposure to Agent Orange, or to compensate those who are suffering chronic disabilities which they feel are caused by such exposure.

The American Legion holds fast to the position that it is the responsibility of the United States Government to use every resource available to determine the consequences of exposure to Agent Orange on those veterans who served in the Armed Forces in Vietnam, and then to adequately compensate those who are suffering from diseases and disabilities as a result of that exposure.

S. 1153, the "Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989" provides for interim disability and death benefits for veterans of Vietnam service who have non-Hodgkin's lymphoma or a soft-tissue sarcoma until April 15, 1992 and establishes certain presumptions between certain diseases experienced by Vietnam veterans and exposure to herbicide agents used in Vietnam. The bill also includes a proposal calling for a study of VA clinical data on Vietnam veterans related to exposure to herbicides or Vietnam service and independent pilot studies to determine the feasibility of future scientific research on Vietnam service-related disabilities. The Secretary of Health and Human Services would be required to report on research to identify and develop treatments for exposure to dioxin and other herbicidal agents. This measure further proposes the extension of VA health care eligibility through December 31, 1993 for Vietnam veterans exposed to Agent Orange. Several improvements are also proposed in the conduct of the Air Force's Ranch Hand Study.

Section 2 of S. 1153 provides for the award of VA disability or death benefits in the case of a veteran who served on active duty in Vietnam during the Vietnam War and who has incurred or who has died from non-Hodgkin's lymphoma or a soft-tissue sarcoma. The disability or death from such diseases would be treated as if it were service-connected. The interim benefits and services under this section would expire on April 15, 1992, unless a joint Congressional resolution to extend the authority to pay these benefits or make such authority permanent is introduced in either House of Congress after January 1, 1992 and acted upon in a specified manner. Upon enactment of this legislation, VA would be required to publicize the provisions of this section and provide notice to all Vietnam veterans who have filed claims for non-Hodgkin's lymphoma or a soft-tissue sarcoma prior to October 1, 1989, the effective date of this legislation.

The American Legion supports the establishment of the presumption of service connection for non-Hodgkin's lymphoma and soft-tissue sarcoma. However, we question the inclusion of the sunset date of April 15, 1992. We feel that there is adequate scientific evidence on which to base such a permanent presumption, without any limitations or restrictions as proposed.

The results of a study entitled "Agricultural Herbicide Use and Risk of Lymphoma and Soft-Tissue Sarcoma", conducted by the National Cancer Institute and the University of Kansas, were published in the Journal of the American Medical Association in September 1986. The population-based case-control study reported that a significant number of farmers who were exposed to herbicides containing phenoxyacetic acid, specifically 2,4-dichlorophenoxyacetic acid (2,4-D).

The Kansas study conclusions said that farmers using the herbicides for 20 days per year or more had a six-fold higher rate of the lymphoma than non-farmers. In some cases the rate was as much as eight-fold. The findings showed that human exposure to herbicides containing phenoxyacetic acid - a component of Agent Orange - did not increase the risk of soft-tissue sarcomas and Hodgkin's Disease, but did increase the risk of non-Hodgkin's lymphoma. It should be noted that the herbicides used by most of the farmers in the study were reported not to contain 2,4,5-T, the other important phenoxyherbicide and the source of 2,4,7,8 - TCDD (dioxin) in Agent Orange.

The Kansas study confirms the results of a Swedish case-control study by Hardell et al that suggests an association between herbicides and non-Hodgkin's lymphoma.

In 1983, The American Legion undertook sponsorship and support of a study investigating the health and well-being of a random sample of Vietnam veterans in its membership. It is titled The American Legion and Columbia University Vietnam Veterans Study, and was carried out by two noted epidemiologists, Drs. Jeanne and Steven Stellman. Results of the study were published in a series of five papers in the December 1988 issue of the journal ENVIRONMENTAL RESEARCH. The results demonstrated that herbicide and combat exposures were highly correlated.

Overall, men who served in Southeast Asia reported a higher incidence of heart disease, benign fatty tumors, skin rash with blisters, change in skin color and increased sensitivity to light. When medical conditions were analyzed by herbicide exposure category and combat intensity grouping, herbicide handlers had significantly elevated incidences, adjusted for age, history of high blood pressure and ulcers. There was a dose-related response between increasing levels of Agent Orange exposure and rates of the skin ailments listed above.

Section 3 would amend section 312 of title 38, United States Code, to provide that in the case of a veteran who served in Vietnam during the Vietnam War, the disease of chloracne shall be considered to be service-connected, if such disease become manifest to a degree of 10 percent or more within one year of the last date of such service in Vietnam.

This is a definite improvement in the presumption of service connection for chloracne which previously provided only a three month presumption period. Few, if any benefits have been paid to veterans suffering from this disease thus far. We fully support an amendment to section 312 of title 38, United States Code, removing the previous restriction. Ample science exists to document the service connection of this rare skin disease.

Section 4 of this measure provides for presumption of service connection for diseases associated with the effects of exposure to certain herbicide agents.

(a) These presumptions are based on the following Congressional findings:

(1) It is in the public interest to provide for an independent nonprofit scientific organization, such as the National Academy of Sciences or similar organization, which has the appropriate expertise to review and evaluate the available scientific evidence regarding associations between diseases and exposure to dioxin and other chemical compounds in herbicides and to make judgments on the degree and probability of such associations, in the absence of a uniform body of scientific literature

on such issues.

(2) The standard of proof required for a scientific conclusion of causation is higher than the standard of proof required for a presumption for the purposes of veterans' disability compensation law, that the adverse health effect, based on sound medical and scientific evidence, is connected to active military service.

(b) New section 312A would be added to title 38, United States Code, to provide that in the case of a Vietnam veteran exposure to a herbicide containing dioxin or 2,4-dichlorophenoxyacetic acid or to any other herbicidal agent will be presumed, and each disease (if any) listed in VA regulations pursuant to this section as having a positive association with the biological effects of exposure to such herbicide agent would be considered to have been incurred in or aggravated by such service, notwithstanding there is no evidence of such disease during the period of service. The Secretary may extend the applicability of this provision to individuals who during the performance of their military service outside of Vietnam were exposed to such herbicide agents.

Under proposed section 312A, the Secretary shall periodically, but not less than biannually, revise the regulations listing those diseases to reflect subsequent determinations that a disease not previously listed in regulations has a positive association or whether a disease in the regulations does not have a positive association with exposure to a herbicide agent.

In prescribing and periodically revising such regulations, the Secretary shall utilize reports from a contract scientific organization or organizations as to any diseases (if any) which have positive, limited positive, or insubstantial association with the biological effects of exposure to a herbicide agent, including such specific effects as porphyrin synthesis, nervous system function, immune function, reproduction and birth defects, and psychological and psychiatric effects. The contract scientific organization would also specifically determine whether there is a positive, limited positive, or insubstantial association between such biological effects and: (A) non-Hodgkin's lymphoma; (B) each soft-tissue sarcoma, other than osteosarcoma, condrosarcoma, Kaposi's sarcoma, or mesothelioma; (C) lung cancer; (D) each other cancer.

In addition with respect to each disease determined to have a positive association, the contract organization's report to the Secretary and to the Congressional Committees on Veterans Affairs shall include a discussion of the biological basis for the association, an estimate of the statistical significance of the association, and an estimate of the relative health risk for such disease(s) in Vietnam veterans, and whether there is a reasonable basis for concluding that a Vietnam veteran with the highest level of exposure to that herbicide agent was exposed to such agent under the circumstances necessary for such biological effects.

This proposal also requires that under the first contract entered into with the scientific organization a comprehensive survey and evaluation of completed and ongoing scientific studies, including the CDC Selected Cancer Study and other evidence on the effects of exposure to herbicides is to be conducted. This survey and evaluation is to be performed by a panel of experts in the fields of toxicology, medicine, epidemiology, statistics, biochemistry, and related fields. The conduct of the survey shall be subject to appropriate peer review.

This section further provides that where a disease is removed from the regulations pursuant to the required periodic review, disability compensation or DIC benefits awarded for such disease shall be continued.

By action of the 1988 National Convention, Resolution No. 310 (VA) mandates The

American Legion to take any and all steps necessary to ensure the Congressional mandate for an Agent Orange Study set forth in PL 96-151 is followed, and the study is completed as expeditiously as possible. (A copy of the resolution is attached).

Following enactment of this law, the epidemiological study of the long-term health effects of Agent Orange became increasingly mired in bureaucratic delays and inertia. In January 1983, The American Legion became impatient with the Federal Govermment's foot-dragging on this important issue and joined with two respected scientists to initiate and complete The American Legion and Columbia University Vietnam Veterans Study previously mentioned. The American Legion stands behind and totally supports the results of this study as they were published in the December issue of ENVIRONMENTAL RESEARCH.

The Congressional findings, as proposed, to review and evaluate the available literature should be directed toward new studies, i.e., animal studies, in vitro tests, clinical case reports in the medical literature and epidemiology, as well as The American Legion study. Section 312A would permit the addition of diseases not listed in previous regulations when new evidence becomes known. With regard to contracting with scientific organizations, provision should be made for representation by veterans service organizations during the review process.

On May 2, 1989, the U.S. District Court for Northern California invalidated the portion of VA regulations which govern the payment of compensation for specific diseases related to exposure to Agent Orange. Specifically, the Judge's decision nullified paragraph (d) of title 38, Code of Federal Regulations, 3.311a, entitled "Diseases not associated with dioxin exposure." His decision further invalidated all denials that were based upon this section of the regulations. The American Legion is working closely to ensure that the development of new regulations required as a result of this legal action provide for the listing of all diseases having a positive association with the biological effects of exposure to herbicide agents.

Vietnam veterans should not be subjected to a higher level of proof than other people who have been exposed to toxic chemicals. Ordinary citizens can be compensated if a judge finds their problem to be "more likely than not" related to their exposures. Workers can be compensated in most states if their exposure on the job only contributed to their disease or condition.

There have been a number of literature reviews over the past 10 years. To embark on yet another full blown literature review will not provide answers unless it is derived from new studies, in our judgment.

Section 5 of S. 1153 would require the Secretary to compile and analyze on a continuing basis all clinical data obtained by the Department as a result of the Agent Orange Examination Program and report to the Congressional Committees on Veterans Affairs on the analysis of such information, including a discussion of the types and incidences of disabilities identified and an explanation for the incidences of such disabilities. The report shall include the Secretary's views on the scientific validity of drawing conclusions from the incidence of such disabilities contained in this data and any association with exposure to dioxin or any other herbicide agent used in Vietnam. The report shall also include an evaluation by the Director of the Office of Technology Assessment.

Use of the Agent Orange Registry and examination records can provide the Secretary with updated information on veterans' health status. The value of these data, although self-reported, should not be underestimated and may provide the basis for adding new diseases to the list in VA regulations for service-connected compensation. However, we understand that the format of the information contained in the Registry has been changed since its implementation, and we feel an explanation of this change and the reasons for such change should also be provided the Committees, in case the overall information contained therein may have been skewed as a result.

Section 6 would require the Secretary to establish and maintain, directiv or under contract, a system for the collection and storage of voluntarily submitted blood and tissue samples of Vietnam veterans to facilitate future research on the effects of exposure to dioxin and other tosix agents in herbicides used in Vietnam. The establishment and maintenance of this archiving system shall be in consultation with the National Academy of Sciences, or alternatively, the Office of Technology Assessment.

A tissue bank is an admirable concept in general, but we question whether it is really necessary? We believe that it helps to firm up the notion that with proper analysis veterans -- some twenty years after exposure -- will show remaining evidence of their exposures. Tissue sample analysis is an excellent research tool. However, they should not even remotely be linked to this legislative measure dealing with presumption. Most scientists agree with the concept of multiple causation of cancer -- initiation, promotion, etc. They do not agree that the carcinogen has to be within the body for 20 years to cause cancer.

Section 7 proposes that the Secretary shall establish a program to conduct feasibility studies as to additional scientific research on the issues of: (a) health hazards of exposure to dioxin; (b) other toxic agents in herbicides used in Vietnam; (c) health hazards resulting from service in Vietnam. Such feasibility studies shall be conducted by non-governmental entities, in consultation with the National Academy of Sciences, with reports to the Congressional Veterans Affairs Committees.

We believe that an organization such as the National Institutes of Health Division of Research Grants would be an appropriate place to have such feasibility studies conducted. These veterans must have an impartial scientific assessment of their health. Oversight by agencies such as the Office of Technology Assessment and the Centers for Disease Control should be avoided, in our judgment based upon our experience with The American Legion and Columbia University Vietnam Veterans Study.

Section 8 would amend section 1204 of PL 100-687 to require the Secretary to annually furnish updated information on health risks associated with exposure to herbicides to Vietnam veterans who have non-Hodgkin's lymphoma or a soft-tissue sarcoma. We fully support this proposal. Reports, together with the record of action taken, should also be shared with veterans service organizations and the public upon submission.

Section 9 would require the Secretary of Health and Human Services to submit to the Congressional Veterans Affairs Committees a report discussing the research being conducted to identify and develop treatments for the physiological absorption of dioxin and other similar toxic agents in herbicides used in Vietnam, including research relating to exposure to dioxin and other toxic agents outside of Vietnam. We believe this report should be broadly focused on such research by other Federal agencies such as the Department of Agriculture, Environmental Protection Agency and all others. We do not support a measure that would allow the Secretary of Health and Human Services to define science (e.g. standards for positive association) or scientific methods in light of past experiences and with that Department's knowledge of the use of herbicides in Vietnam. However, we do not oppose the proposed reporting on the identity and treatments for absorption of dioxin.

Section 10 would amend section 610(e)(3) of title 38, United States Code, to extend to December 31, 1993 eligibility for VA health-care for Vietnam veterans based on exposure to Agent Orange. We feel it is wrong to place a delimiting date on the provision of treatment to veterans exposed to Agent Orange. The availability of treatment should be made permanent.

Section 11 would amend section 1205 of PL 100-687 to add the provision that the VA Advisory Committee may consult directly with and provide information and recommendations directly to the Department of the Air Force scientists conducting the Ranch Hand Study and that such scientists may consult with and provide information and recommendations to the Advisory Committee. No officer or employee of the Federal Government may intervene or impair such direct communication between the Advisory Committee and such scientists. There is a distinct need for full and open communication and cooperation between all entities dealing with this important issue.

Mr. Chairman, we are also pleased to share our views on proposed legislation designed to deal with the substantial increases in appropriations for the VA Home Loan Guaranty program over the past ten years. We congratulate the Subcommittee and you, Mr. Chairman, on the initiative shown in your legislation -- and we look forward to working with the Subcommittee to insure these reform measures are fair to veterans, fair to taxpayers, and restore solvency to an important program which has assisted more than thirteen million veterans to own a piece of the American dream.

There is a common perception of the VA home loan program as a self-sustaining operation which has recently come to grief solely because of poor management and excessive liberality in evaluating the capacity of the veteran to qualify for a VA guaranteed mortgage. There is another perception that the Loan Guaranty Revolving Fund (LGRF) has, until recently, been self-sufficient. Both of these perceptions are largely myth. By its very nature, the Loan Guaranty program is designed to run at a deficit, except for those unusual years when inflation in real estate values permits the VA to recover both its investment in foreclosed properties, as well as property management costs.

During the first seventeen years of the program's life, Congress appropriated monies directly into the VA's readjustment account to cover its costs. In all, Congress provided nearly $730 million for the program between 1944 and 1962, or roughly $3 billion in 1988 dollars. In 1962, the Loan Guaranty Revolving Fund (LGRF) was established for the dual purpose of paying program costs and receiving collections from the sale of property and receipt of overpayments. In only eleven of the 26 years since 1962 has the LGRF operated at a surplus. Moreover, since the law prohibits carryover of monies in excess of estimated need from one year to the next, a cumulative surplus has never developed in the fund. All funds over and above those estimated to be needed to supplement the receipts of a new fiscal year revert to the Treasury.

Yet, between 1962 and 1984, there was no need to appropriate general revenues for the LGRF, because the fund was sustained by income from another source: the VA's Direct Loan program.

Established in 1950, the Direct Loan program, in which the VA itself is the lender, was developed to meet the mortgage needs of veterans living in areas where private credit was short or nonexistent. The Direct Loan program was initially capitalized through appropriations by Congress, but also relied upon a Revolving Fund into which principal and interest payments were made. During the first six years of the program's life, direct loans accounted for two to five percent of total VA home loan activity. The tight money supply occasioned by the dual recessional period of 1958-1961, however, greatly increased the demand for direct loans dramatically. In 1961, 16 percent of all VA loans were direct. Thereafter, this proportion declined gradually, owing to the greater availability of private credit, until by 1984, only 8 of the 214,443 VA home loans were direct. In fact, except for rehabilitation loans, the Direct Loan program has been effectively shut down since March of 1981. Because of the decline in the numbers of direct loans over the years, the principal and interest payments into the Direct Loan Revolving Fund exceeded the demand for loans, and the fund began to develop a large surplus. Monies from that surplus were transferred, as needed, into the LGRF, thus obviating the need for appropriations to cover funding for those years in which the LGRF's receipts fell short of its payouts in property acquisitions and claims resulting from foreclosures. Between 1962 and 1984, approximately $1.784 billion was so transferred from one fund to the other.

As the Direct Loan program's surplus increased, the VA came under increasing pressure to sell off part of its portfolio for cash to offset growing Federal budget deficits. As such deficits grew wildly during the early 1980s, the pace of portfolio liquidation increased significantly and income from the program shrank proportionately.

Between 1981 and 1984, nearly $2 billion in the portfolio was sold. The Administration's FY 1989 budget proposes to sell the remainder. Thus the primary source of supplementary income to support the LGRF during lean years has been virtually depleted to effect short-term Federal budget savings.

The elimination of the direct loan portfolio as a revenue instrument for its sister loan guaranty program could not have come at a worse time. For over thirty years, the

VA home loan program was the beneficiary of not only an ancillary funding source to assist during periods of shortfall brought on by economic downturn, but also benefited from gradual inflationary growth in real estate prices from 1944 to 1977. It is important to realize that prices increased nearly 200 percent during those years. After that period, however, the sequence of uncontrolled and rapidly accelerating inflation, followed by recession, rising interest rates and growing VA property inventories began to place the greatest strain upon the LGRF since the fund's creation in 1962. Beginning in 1981, the LGRF began to show a widening disparity between the monies it paid out for acquiring foreclosed properties, and the monies received for selling these properties.

In 1982, Congress imposed a 1/2 of 1 percent "user fee" on all new VA Home Loans. Touted as a means of helping to pay for the operational costs of the home loan program, the money was collected and deposited as general revenue in the Treasury. As it became apparent that Congress might have to appropriate funds to sustain the solvency of the LGRF, the fee was raised to 1 percent, and the law provided that its revenues would go to the Revolving Fund.

Nevertheless, in 1984, for the first time in 21 years, Congress was forced to appropriate money for the VA Home Loan program, in the amount of $100 million, and appropriations have been required every subsequent year. The data provided in the President's budget for 1988 and 1989 demonstrate that the funding crisis for the program, far from being over, has ballooned enormously. Unless some reforms are enacted, the LGRF will remain increasingly dependent on massive infusions of general revenue to sustain itself. This prospect is unacceptable to The American Legion, to the Appropriations Committees, and to most veterans in an era of budget deficits.

S. 404 would amend section 1829(c) of title 38, United States Code, to extend the current one percent loan fee until September 30, 1991.

All of us are aware that the current one percent "user fee" is not going to disappear. In fact, the Reagan Administration proposed an increase to 3.8 percent for FY 1990. The funds are needed to keep the program viable. Yet this fee is basically a charge for an entitlement, a concept which The American Legion strongly opposes. That is our basic problem with S. 404 — it simply extends the one percent user fee for two years without providing anything to the veterans other than access to a program designed to be a benefit.

S. 898 is entitled the "Veterans Housing Amendments Act of 1989."

Section 2 of this bill amends section 1810 of title, 38 United States Code, to allow refinancing of certain loans provided the loan to be paid meets certain criteria. Mr. Chairman, we find this amendment to be a reasonable accommodation to veterans wishing to refinance a loan while at the same time, to be fair to the government, which has a legitimate interest in ensuring the ability of a veteran to absorb some risk and thus the ability to repay the loan.

Section 3 will allow the Secretary to sell vendee loans ~~under certain~~ circumstances. H.R. 1415 will also allow such sales to take place provided that at least 90 percent of the unpaid balance is received at the time of the sale. The language in S. 898 is less restrictive and thus will provide the Secretary with additional flexibility in determining whether or not to sell these loans. In our view, this additional flexibility is probably a good thing provided that the professional financial advisor gives unbiased advice, and provided that the review of the experience of other Federal agencies is conducted in an unbiased manner.

We have no problem with the exploration of marketing strategies or the acceptance of bids when they meet marketing conditions except that if loan asset sales are mandated by the Office of Management and Budget, and if market conditions will only permit sales at well below par, then the Secretary may be forced to conduct a "fire sale" of these loans in spite of the advice of a professional financial advisor. We suggest that while we are not particularly tied strongly to the 90% of par value in the House bill, some value below which loans could not be sold would be an appropriate addition to this legislation.

Section 5 of the bill revises portions of section 1812 regarding manufactured housing. Mr. Chairman, as you well know, this type of housing has been crucial in some areas of our country in providing the opportunity for home ownership to veterans and other moderate income segments of our society. In our view, industry standards developed as a self-policing effort on the part of a group of manufacturers of a particular product have a reasonably good record at protecting consumers from fraud and shoddy products. The provisions in this bill which allow reliance on industry standards deserve a fair chance provided the Secretary is equipped with the resources to make the determinations provided for in the ensuing paragraphs.

Section 1812 of title 38, which deals with Public and Community Water and Sewage Systems, is obsolete and its removal by S. 898 is proper.

In our view, the balance of S. 898 conforms with our view of what constitutes a reasonable trade-off between protection of the veteran and protecting the interests of US taxpayers.

S. 1158 is entitled the "Veterans' Home Loan Guaranty Restructuring and Solvency Act of 1989."

Mr. Chairman, there are only three provisions of S. 1158 which differ in any significant manner from H.R. 1415. Since The American Legion supported H.R. 1415 in its entirety, I will confine these remarks to those differences.

We note the language differences in the indemnity provisions of the Senate legislation as opposed to the House. We understand that both bills will have the same effect of eliminating liability to the VA for any loss resulting from a default by anyone who pays a fee. etc. This portion is the crux of our support for this legislation. We all recognize the need for a fee to help keep the program solvent, or at least minimize the need for ever-growing appropriations. In the case of this legislation, the payment of the fee buys indemnity for the veteran from any liability to the VA in the event of a default, except in the case of fraud or misrepresentation. Thus, the veteran receives something of value in exchange for the fee. This is fair and equitable to both veterans and taxpayers in our view.

We note with interest that the Secretary would have the authority, given proper notification, to adjust upward the amount of the fee by no more than 20% for the coming year. We believe that this provision will have the effect of providing the Secretary with enough flexibility to manage the Home Loan program properly and keep it solvent. Mr. Chairman, we congratulate you on your foresight for including this provision. We believe that enough oversight has been built into the provisions to prevent abuse.

One of the situations which caused the Home Loan program to fall into the fiscal pit where it currently resides was the practice on the part of "high-flying" lenders to grant loans to unqualified people, or to grant loans larger than a family was able to handle. There are cases where loans requiring payment of up to 40% of a veteran's monthly gross income were approved. That such loans ended up in default should surprise no one. Thus the provision of allowing a veteran to purchase additional loan guaranty entitlement while at the same time indemnifying the veteran gives us pause.

As you are aware, Mr. Chairman, section 1802 of title 38 permits the Secretary to grant automatic guaranty authority to lenders who meet certain standards set by the Secretary. This is an efficient method of conducting business, except that the possibility of lender abuse may exist in the case of an increased entitlement purchase. What happens, for example, if a good and properly certified lender comes under the influence of bad management. The now unscrupulous lender is protected by the loan guaranty, which the lender has perhaps persuaded the veteran to increase in increments of $10,000. While we have no problem with allowing a veteran to purchase additional loan guaranty entitlement, we wish to insure that this provision doesn't turn into the "Lender's Profitability Act of 1989." We suggest that the VA be required to review the credit worthiness of all veterans seeking loans with an additional guaranty entitlement.

Mr. Chairman, we are satisfied that S. 1158, together with S. 898 and H.R. 1415, will serve to put the Home Loan program back on sound financial footing. We are ready to work with this Committee and with your counterparts in the House to reach the middle ground on these issues. We congratulate you for your initiative in these matters.

Mr. Chairman, in addition to the foregoing legislative measures, comment has been requested on section 221 of S. 13 concerning security and law enforcement services on property under the jurisdiction of the Department of Veterans Affairs. This provision would amend section 218 of title 38, United States Code, to require that the Assistant Secretary who is assigned management, productivity, and logistic support functions shall be responsible for the technical and functional supervision - but not the day-to-day supervision or line management - of security and law enforcement services at VA facilities. This proposal would also require the Secretary of Veterans Affairs within 90 days of enactment of this legislation, to submit a report containing a plan to upgrade its security policy training, recruitment, and salaries and an evaluation of the need for establishing (a) a policy on the issuance of weapons to security personnel at VA medical centers located in high crime areas and the use of weapons by such personnel; and (b) the advisability of reducing the security and law enforcement services at VA medical centers with no significant security problems in order to expand such services at centers with more significant security problems.

Mr. Chairman, for many years The American Legion has been keenly interested in the problems that continue to plague VA's Security Service in the form of excessive turnover rates of personnel, ongoing recruitment and retention problems, and a host of other serious shortcomings that demand attention. Our expectation is that VA medical centers provide a safe environment for the provision of medical care to veterans. Recent reports by the media alluding to negligent VA security officer hiring practices raise serious questions about the adequacy of medical center security and the ability of the VA to hire qualified security officers.

We are pleased that VA is addressing these issues and has reinforced its hiring practices through broadening the initial background investigation of all security officer candidates. Also we are pleased that in some selected medical centers security officers have been approved special salary rates, and in certain instances have been reclassified to the GS-6 level.

Greater oversight continues to be necessary to ensure that VA Security Service does not reach a level of complacency, and that it carries out its responsibility of providing protection to the patients, staff, and Federal property.

Mr. Chairman, with respect to assigning organizational and function responsibility for VA law enforcement and security services to an Assistant Secretary of Veterans

Affairs. The American Legion has no formal position. In view of the many problems affecting security at VA facilities across the country, we believe strongly that the administrative, fiscal and personnel needs of the Security Service should be accorded a very high priority by the management of the Veterans Health Service and Research Administration.

We welcome the provision which will require the Secretary of Veterans Affairs to report within 90 days after enactment of this legislation, on a plan to upgrade VA police officer training, recruitment and salaries. However, The American Legion has consistently been opposed to the idea of VA security officers being issued weapons in the course of their duties. There have, unfortunately, been occasions in the past several years of theft, vandalism, and assaults. There have also been cases where VA security officers have been slain in the line of duty. We believe, however, that the proper response to these incidents lies more in the area of improving security officer training, which has been sorely lacking in past years, and in the use of proper equipment such as bulletproof vests and other security devices.

We also believe the answer to improving security at medical centers in urban, high crime areas can be addressed both through improving officer training and increasing security staff where needed. Often rural, low crime area VA medical centers have barely enough security staff to effectively provide security coverage around-the-clock. The shift of resources and FTEE from rural to urban medical centers would leave these facilities and their personnel dangerously at risk and this proposal would only serve to create new problems, in our judgment.

Appropriate system-wide staffing standards need to be developed and adhered to if urban medical centers hope to have sufficient security officer coverage. Reducing the high vacancy and officer turnover rates by improving pay and benefits would add to the personnel resources already authorized for urban medical centers.

Mr. Chairman, that concludes our statement.

SEVENTIETH NATIONAL CONVENTION
OF
THE AMERICAN LEGION
LOUISVILLE, KENTUCKY
SEPTEMBER 6, 7, 8, 1988

RESOLUTION NO: 310 (VIRGINIA

SUBJECT: THE AMERICAN LEGION POLICY ON AGENT ORANGE

COMMITTEE: VETERANS AFFAIRS AND REHABILITATION

WHEREAS, The chemical herbicide commonly known as Agent Orange was sprayed throughout Vietnam during the years 1962-1971, to defoliate jungle and rice paddies; and

WHEREAS, The total long-range toxic effects of the defoliant, of which in excess of 10.6 million gallons were reportedly expended by American military forces, remain virtually unknown; and

WHEREAS, The chemical mixture of 2,4-D and 2,4,5-T, which contains a certain amount of the chemical dioxin, has been subjected to partial bans by the Environmental Protection Agency following reports of spontaneous abortions and stillbirths in areas where heavily used in the United States; and

WHEREAS, A significant number of service personnel serving in Vietnam were exposed to these toxic chemicals and have subsequently developed cancer, neurological disorders, liver dysfunction, severe depression, and other life-threatening diseases; and

WHEREAS, These veterans are now seeking benefits from the VA, to which they believe they are justly entitled, by reason of disease and disability incurred through exposure to Agent Orange; and

WHEREAS, The American Legion has been strongly supportive of the studies and research being conducted by the Air Force, the Centers for Disease Control, the Armed Forces Institute of Pathology, the Veterans Administration, etc., on Agent Orange, and has urged the Federal Government to proceed without delay using all resources available, to ascertain with scientific validity the effects of Agent Orange on veterans who were exposed to it during their active military service; and

WHEREAS, The study of the long-term health effects of Agent Orange exposure that was mandated by Congress in 1979, and turned over to the Centers for Disease Control by the VA in 1983, became mired in major methodological problems; and

WHEREAS, The Centers for Disease Control has now concluded that the agency cannot find enough Vietnam veterans who were exposed to Agent Orange to do a scientifically valid study of the herbicide's effects on humans; and

WHEREAS, The American Legion is troubled by CDC's conclusion, particularly since a substantial percentage of the original study subjects were disqualified based upon criteria set forth by CDC; and

WHEREAS, The American Legion is aggressively assisting and counseling veterans in the filing and development of claims for benefits provided under title 38, United States Code, and referring those individuals claiming exposure to the persons responsible for the Agent Orange examination program at the nearest VA medical center or outpatient clinic for an appropriate examination; and

WHEREAS, Public Law 98-542, the "Veterans' Dioxin and Radiation Exposure Compensation Standards Act", provided the Veterans Administration with the authority to determine the disabilities related to Agent Orange exposure based on its interpretation of scientific and medical evidence; and

WHEREAS, The only condition that has been recognized by the Veterans Administration since the law was enacted in 1984 is the skin condition chloracne, if it is manifested not later than three months from the date of the veteran's exposure to Agent Orange; and

WHEREAS, A significant number of Vietnam veterans have expressed displeasure with the manner in which they were attended to during their Agent Orange examination at a VA medical facility; now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in Louisville, Kentucky, September 6, 7, 8, 1988, that The American Legion urge the President, the Administrator of Veterans Affairs and the Secretary of Health and Human Services to exert whatever pressure is necessary to resolve the administrative and methological problems existing within the Centers for Disease Control that have placed the comprehensive study of the toxic effects of Agent Orange exposure in jeopardy of cancellation; and that The American Legion take any and all other steps necessary to ensure that the Congressional mandate set forth for the study in PL 96-151 is followed, and that the study is completed as expediently as possible; and, be it further

RESOLVED, That The American Legion closely monitor the development of all ongoing research on the long-term health effects of Agent Orange exposure and point out to the proper officials any perceived deficiencies or discrepancies in these projects; and, be it further

RESOLVED, That The American Legion bring to the attention of the Veterans Administration and its Advisory Committee on Environmental Hazards, any and all information and scientific and medical evidence relating to possible adverse health effects of exposure to Agent Orange for the purpose of expanding the list of disabilities for which service connection may be granted; and, be it further

RESOLVED, That The American Legion disseminate the most current responsible information on Agent Orange to Legionnaires, Vietnam veterans and their families, and the public through all resources available to transmit such information; and, be it finally

RESOLVED, That The American Legion continue to make careful observation of the Veterans Administration's Agent Orange examination program to determine whether or not Vietnam veterans reporting to VA medical care facilities claiming exposure are being appropriately examined, and that the examining physicians demonstrate both compassion and thoroughness in the way they receive, examine and treat all Vietnam veterans who present themselves alleging dioxin exposure.

1125 Fifteenth Street, N.W.
Washington, D.C. 20005

202-861-6500

Mortgage Bankers Association of America

STATEMENT OF

ANGELO R. MOZILO
PRESIDENT AND CHIEF EXECUTIVE OFFICER
COUNTRYWIDE FUNDING CORPORATION
PASADENA, CALIFORNIA

on behalf of the

MORTGAGE BANKERS ASSOCIATION OF AMERICA

before the

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

Hearing on
S. 1158
The "Veterans' Home Loan Guaranty Restructuring
and Solvency Act of 1989"

June 22, 1989

Mr. Chairman and members of the Committee, I am Angelo R. Mozilo, President and Chief Executive Officer of Countrywide Funding Corporation in Pasadena, California, and am appearing today on behalf of the Mortgage Bankers Association of America (MBA).[*] Accompanying me today are Burton C. Wood, MBA's Legislative Counsel, and Linda K. Bumbalo, MBA's Associate Legislative Counsel.

MBA appreciates the opportunity to appear before you today to testify on S 1158, the proposed "Veterans' Home Loan Guaranty Restructuring and Solvency Act of 1989"; on HR 1415, the "Veterans Home Loan Mortgage Indemnity Act of 1989," passed by the House of Representatives on June 6; and on several other issues.

MBA would also like to voice our strong objections to the proposed changes by the VA to the no-bid formula used to decide whether the VA or the mortgage lender acquires a foreclosed property. Another issue that concerns MBA is the action by the VA changing the interpretation of 38 U.S.C. Section 1831(b) dealing with appraisers.

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[*] The Mortgage Bankers Association of America is a nationwide organization devoted exclusively to the field of housing and other real estate finance. MBA's membership comprises mortgage originators and servicers, as well as investors, and a wide variety of mortgage industry-related firms. Mortgage banking firms, which make up the largest portion of the total membership, engage directly in originating, selling, and servicing real estate investment portfolios. Members of MBA include:

- Mortgage Banking Companies
- Commercial Banks
- Mutual Savings Bank
- Savings and Loan Association
- Mortgage Insurance Companies
- Life Insurance Companies
- Mortgage Brokers
- Title Companies
- State Housing Agencies
- Investment Bankers
- Real Estate Investment Trusts

MBA headquarters is located at 1125 15th Street, N.W., Washington, D.C. 20005; telephone: (202) 861-6500.

The primary focus of our testimony will be on S 1158. However, before addressing that bill and the other proposals, MBA wishes to express its gratitude to the Committee for its assistance in efforts to implement the interest accrual amendments to the no-bid formula enacted December 1987 in P.L. 100-198, the "Veterans Home Loan Program Improvements and Property Rehabilitation Act of 1987". On March 31, the VA published the proposed no-bid regulations, and on April 28 MBA submitted a comment letter to the VA, asking for prompt implementation with one recommended change. The proposed regulations for direct appraisals were released on May 11. MBA has submitted a comment letter to the VA. Proposed regulations for underwriting on assumptions were released last week and MBA will submit its comments to the VA.

Mr. Chairman, MBA certainly understands the interest in exploring a new financing mechanism for the VA home loan program. Under the current system, the risk burden associated with loan foreclosures is shared by the lender, the veteran, and the Federal government--the veteran by paying the 1 percent funding fee, the lender by the losses sustained on no-bids, and the Federal government by appropriations. Although all of these parties are bearing heavy cost burdens, the program is still in distress.

This Committee and Congress are faced with difficult choices if losses are to be reduced on future VA loans. As to the existing VA loans, we understand the desire to share the losses, as is currently occurring with lenders bearing losses as a result of "no-bids" and the government carrying the balance of the burden with substantial appropriations. However, we believe that lenders today are bearing a sharply higher and unfairly burdensome proportion of all losses on VA loans. The lender's loss on a no-bid case is between $15,000 and $20,000. In 1988, lenders incurred $200 million of losses on no-bids. This cannot continue without adversely affecting lenders' future participation in the VA program.

VA PROPOSAL TO INCLUDE COST OF FUNDS IN NO-BID FORMULA

MBA opposes the proposal to include any of the government's cost of borrowing funds in the no-bid formula. The formula should be amended as proposed in HR 1415 to prohibit the inclusion of the cost of government borrowing in the definition of "net value." MBA supports temporarily extending the no-bid formula as proposed in S 1158 and HR 1415 through September 30, 1991.

On March 31, the VA proposed regulations scheduled to become effective August 1, 1989, that would increase the number of cases in which lenders would be required to accept payment of the guaranty amount in satisfaction of all losses sustained on account of the loan and to dispose of the foreclosed property rather than convey it to the VA. The regulations would achieve this result by requiring the fair market value of a foreclosed property to be reduced by a new charge--the estimated costs to the government of the funds used by the VA to purchase the property and hold it until disposition.

The no-bid formula enacted by Congress in 1984 (P.L. 98-369) section 2512(a)(2)) established statutory criteria which determine when lenders may convey foreclosed property to the VA. The VA's proposed regulations would change these criteria by amending the definition of "net value" now contained in the VA's final regulations and adopting a definition of net value which differs from the statutory definition. Because the term net value is defined by the legislation which established the no-bid formula, the VA does not have the discretion to make this change to the definition of net value used in its regulations.

The definition of "net value" contained in the VA's March 31, 1989 regulations ignores express language in the Conference Report to P.L. 98-369 (H. Rep. No. 98-86, 98th Congress, Second Session, page 1377 (1984)) which makes clear that the government's cost of funds is not included in the statutory definition of "net value." Moreover, the VA's proposed regulations contradict the express language of the statutory definition by substituting the VA's phrase "costs the Secretary estimates would be incurred by the Government" for the statutory phrase "costs the Secretary estimates the Secretary would incur." The Secretary does not incur the estimated costs to the government of the funds used to acquire and hold until disposition the property the lender conveys to the VA.

The VA cannot, by the exercise of its rulemaking authority, revise the definition of "net value" embodied in statutory language.

The proposal to amend the definition of "net value" in S 1158 would compare the higher cost of borrowing funds necessary to acquire the foreclosed property with the lower cost of borrowing funds needed to pay the amount of the guaranty when the property is not acquired by the VA. One-half of the difference between the two amounts would be included as an offset to the value of the property.

The new formula is intended to create a comparison that does not ignore the cost of borrowing funds when the VA does not acquire a property, and to avoid a drastic increase in the number of no-bids. While adding the government cost of borrowing to the no-bid formula would definitely increase the number of no-bids, it is not clear that the proposed adjustment would decrease the no-bids by a proportionate amount.

The proposal assumes that the government will have to borrow the funds to pay all of the default costs of the VA guaranty program, either to pay the guaranty or to purchase the property. Every dollar that the government spends is not a dollar that it borrows. There are always a certain amount of revenues that are raised every year, so it is unfair to assume that the government will have to borrow only every dollar that is spent for the VA loan guaranty program while the budget does not assume that every other federal dollar is borrowed. The assumption therefore places both the payoff of the guaranty or the acquisition of a property on a inequitable basis with all other Federal spending programs and Federal loan guarantee programs.

Effect on Veterans and Lenders. The cost-of-funds proposal is another attack on the VA home loan program that will increase lenders losses on VA-guaranteed mortgages unconscionably. This program, which has helped almost 13 million veterans to purchase homes, cannot survive without the cooperation and participation of private sector lenders, primarily mortgage bankers. Private sector lenders' share of property acquisitions has already increased from approximately 3 percent in 1984 to 24 percent in 1988, costing lenders hundreds of millions of dollars. (See Exhibit I.)

In fiscal year 1988, lenders lost approximately $200 million due to VA no-bid acquisitions. Mortgage bankers sustain an average loss of $20,000 on each no-bid. The income that mortgage bankers receive from servicing VA-guaranteed mortgages is derived solely from the small servicing fee they receive. MBA surveys show that the average net income that a mortgage banker gets from servicing one loan for one year is $35. The loss sustained on one no-bid effectively negates a mortgage banker's income from servicing 570 loans.

The VA estimates the cost-of-funds proposal would shift an additional $20 million of the VA program costs to lenders in fiscal year 1989 and approximately $150 million more in fiscal year 1990.

Statistics and surveys compiled by MBA show that lenders are no longer willing to participate fully in the VA home loan program because of no-bid losses and because the rules are constantly being changed. The effects of the existing VA no-bid policy already have begun to hurt veterans.

In a January MBA 1989 survey, almost 70 percent of VA home loan program lenders said they would limit their participation in the VA home loan program if the regulations were changed to increase the number of cases where lenders were forced to acquire and dispose of the properties. More recently, in response to these proposed regulations, many MBA members reported that if the cost-of-funds proposal is implemented, they will be forced immediately to make further strategic efforts to minimize VA home lending.

Shifting the risk years after loans have been originated is unfair. The VA, itself, "...does not believe it would be equitable to charge the veteran with the government's estimated costs of borrowing the money to pay for the property to be acquired." (54 FR at 13320) It is no more equitable to charge the lender this new and unexpected expense for existing loans.

MBA would be remiss if it did not reinforce the concerns about the proposed change that have been expressed by the Government National Mortgage Association (GNMA) in a recent letter to the VA. GNMA guarantees payment to investors in mortgage-backed securities (MBS) collateralized in part by VA loans.

Under the GNMA program, the lender passes through principal and interest payments collected from the veteran to the investor. Upon prepayment or default, the lender must pass through the remaining principal balance of the loan. In no-bid cases, the amount of the guaranty received from the VA is insufficient to cover the loan, so the lender must advance the remaining balance to the investor to pay off the foreclosed loan. Because of lenders' losses from these payoffs, lenders in some cases have been forced to default on their GNMA contracts, which results in GNMA being obliged to honor its guarantee to investors with government funds.

GNMA stated in its letter to the VA that its losses due to no-bids have increased to the point where they are "the number one threat to the viability of the concept of a government-guaranteed mortgage-backed security program" and that "it is likely that GNMA will have to make program changes reflective of the increased risks of VA-guaranteed loans."

MBA strongly urges Congress to prohibit, as contained in HR 1415, the action proposed by the VA. MBA believes implementation of VA's regulations will seriously impair a program that has successfully served the housing needs of millions of veterans since 1947.

VETERANS' HOME LOAN GUARANTY RESTRUCTURING AND SOLVENCY ACT

S 1158, the "Veterans' Home Loan Guaranty Restructuring and Solvency Act of 1989" (Restructuring Act), introduced on June 9, would create a new financial mechanism as an alternative to the current Revolving Fund for providing monies to operate the VA home loan guaranty program (the program) in the future. The proposal would change the amount of and make permanent the funding fee and would appropriate Federal monies for all VA home loans when they are originated. It leaves in place the no-bid provisions, so lenders will continue to share in the risk burden.

Funding fee. The Restructuring Act would make permanent the current temporary funding fee paid by veterans for loan originations by lenders and would increase it from 1 percent to 1.25 percent for no-downpayment loans. For loans with at least a 5 percent downpayment, the fee would be .75 percent, and for 10 percent downpayment loans the fee would be .25 percent. The Federal government would pay .25 percent of the loan amount into the proposed Home Loan Guaranty Fund (Guaranty Fund) in each of three consecutive fiscal years, beginning in the year the loan is originated, for a total of .75 percent.

Historically, MBA has called attention to the fact that the fee was not contemplated when the program was instituted, but that a temporary fee may be necessary for the financial stability of the Revolving Fund. In making the decision whether to make the funding fee permanent, Congress should consider whether such action alters the entitlement nature of the program.

MBA believes the proposal to match on a sliding scale the funding fee with the downpayment is an interesting concept. Such a sliding scale preserves the existing benefits offered by the VA loan program with its no downpayment ease of entry into mortgage financing. However, the provision may run against the fundamental entitlement concept on which the VA housing program was founded. MBA believes that the institution of this sliding scale may result in the discrimination against no-downpayment loans which are made to the veterans who need their VA entitlement the most. For example, a two-tiered pricing policy could develop in the secondary market, which could increase the cost of buying a home to the veterans who can least afford it. MBA believes that the entitlement concept must be applied equally to all veterans.

MBA opposes the provision permitting the VA to raise the funding fee for a number of reasons: (1) it runs against the entitlement concept on which the program was founded; (2) it raises housing costs to the veteran; (3) it permits only the raising of the fee without the authority to lower the fee if data supports such an action; and (4) it would be administratively difficult to implement because making any changes on economic projections for the next two years would be highly subjective at best.

Optional increase in the VA entitlement

While MBA applauds the Committee's recognition of the inadequacy of the guaranty in high cost areas, MBA does not believe that the veteran should be forced to pay for this additional entitlement. MBA believes that any deficiencies in the amount of entitlement in high cost areas should be addressed by adding a high cost feature to the existing entitlement concept.

Veterans' liabilities. The bill also proposes to release any veteran who pays the fee from liability to the VA, in case of default on the VA loan. There are several issues associated with this proposal. First, MBA would like to point out that one element of the incentive to keep a loan current is the consequence of being responsible for payment of the debt. Congress needs to seriously consider the effects of a government policy where borrowers know in advance that there is impunity in case of defaults on their loans. One question that needs to be addressed in such a context is what impact a release from liability to the VA for VA loans would have on other government loan programs. Rather than a blanket release, MBA suggests that the VA be granted the option of releasing veterans from liability on a case-by-case basis.

Second, as proposed, the release from all liability would apply only to properties acquired by the VA. In no-bid cases, where the lender acquires the property, the VA would pay the lender only the amount of the guaranty. Lenders still have the legal right to collect from veterans the amount of the debt that remains unsatisfied. Veterans whose foreclosed properties would be acquired by lenders would have paid the same permanent funding fee as defaulting veterans whose properties would be acquired by the VA. However, these veterans would not be released from liability with respect to the losses for which the VA has not reimbursed the lender. The veteran's release from all liability, therefore, would be conditional on whether the foreclosure results in the VA acquiring the property. No-bids occur in almost one out of four foreclosures.

The only way that there would be consistency and equity to the insurance-for-veterans concept of the proposal would be if the VA would acquire the property and pay the full amount of the debt to the lender in every case of foreclosure. Then all veterans could be relieved from all liability. However, by maintaining the no-bid formula, the proposal only grants the veteran a contingent release from liability.

Partial payment notification

This provision would require a lender to notify the VA whenever the lender refuses a partial payment and to state the circumstances of the veteran's default and the reason why the lender refused the partial payment.

VA regulations at 36.4315(b) (Exhibit II) already provide extensive protection for veteran homeowners regarding the lender's handling of partial payments. The provisions in the new bill would result in a morass of useless paperwork for both the VA and the lender. The provisions would apply to the refusal of partial payments in any amount even if the loan is only one day past due.

There are many valid reasons why lenders return partial payments and, in most instances, this does not result in a severe default or a foreclosure. In most cases, lenders' lock-box arrangements cannot accommodate this additional reporting burden, and because of the volume of paperwork this would produce, the VA certainly will not be able to respond in any fashion to the notifications.

MBA recommends that any legislation on partial payments should be targeted to cases that might end up in foreclosure. For example, the lender could notify the VA, at the time the required Notice of Default is submitted to the VA, if the lender has refused a partial payment equal to or in excess of one full monthly installment. After the Notice of Default has been submitted, the lender would notify the VA of any subsequent refusal to accept partial payments.

Budget impact. The Guaranty Fund proposal would have several budget impacts. First, it will increase the need for appropriations to the existing Revolving Fund, because the current funding fee revenue to the Revolving Fund would be eliminated, and there would be only minimal income from other activities to offset defaults on existing loans. The VA would be under pressure to increase sales of VA- acquired properties in order to increase short-term revenues to the Revolving Fund. This policy could result in excessive VA sales in troubled market areas, which could further depress regional market values and reduce long-term revenues to the Fund.

Second, MBA is concerned about estimating loan activity for purposes of appropriating the Federal government's 75 basis point share and about program continuity in the event estimates are too low. MBA is concerned about who would project loan activity and that this projection would become subject to political forces. An underestimate of projected volume could be made in an effort to discourage use of the program. Also, it is not clear what would happen if the projection was too low. It should be made clear that the VA would not be precluded from guaranteeing loans if the Federal share of the VA guaranty premium fell short because a projection was inaccurate. There is no specific authorization for appropriations, and it is unclear how the Federal government's three quarters of a percent three-year fee will be provided. Presumably, there would be some estimate of the total dollar amount of loans originated in a given fiscal year, and an appropriation for that amount would be requested.

In addition, MBA is concerned that the proposal could reverse a provision which the Congress instituted in P.L. 100-198 exempting the VA loan guaranty program from sequestration under the Gramm-Rudman-Hollings Deficit Reduction Act. If sequestration occurs, the budget authority provided to the new Guaranty Fund would automatically be reduced, and unless the legislation specifies otherwise, the number of loans that could be originated would accordingly be reduced. This automatic reduction could occur at a time when the demand for mortgages is very high. Consequently, as in the case where projections were simply inaccurate, veterans fully eligible for the guaranty program and entitled to the guaranty as a benefit could be denied a VA guaranteed loan. In this case, veterans could be denied a loan because the deficit was too high for reasons completely unassociated with the VA program.

APPRAISALS

MBA is also concerned about the impact of a recent VA interpretation concerning a Title 38 requirement on rotational selection criteria for appraisers. After five years of accepting appraisals completed by HUD Direct Endorsement lender staff appraisers that are reviewed and countersigned by HUD, VA has now stated that these appraisals can no longer be accepted because they were not performed by appraisers on a rotational basis. The net effect of this policy will be to require additional appraisals to be completed in those cases where a veteran buyer is found. This will create unnecessary delays and expense that will adversely affect the veteran. MBA respectfully asks your assistance in obtaining relief from this requirement.

MBA appreciates the opportunity to testify before you today and we would be happy to answer any questions you might have.

EXHIBIT I

VA NO-BIDS AND FORECLOSED LOANS

Fiscal Year Ending	Loans Foreclosed	Number of No-Bids	Number of No-Bids As Percentage of Total Foreclosed
1981	12,490	358	2.9
1982	15,427	238	1.5
1983	21,176	689	3.3
1984	23,377	1,496	6.4
1985	27,276	3,055	11.2
1986	34,642	5,236	15.0
1987	43,316	9,097	21.0
1988	47,712	11,391	23.9

Source: Veterans Administration
Prepared by the Mortgage Bankers Association of America, February 1989.

EXHIBIT II

§ 36.4315 Notice of default and acceptability of partial payments.

(a) *Reporting of defaults.* The holder of any guaranteed or insured loan shall give notice to the Administrator within 45 days after any debtor:

(1) Is in default by reason of nonpayment of any installment for a period of 60 days from the date of first uncured default (see § 36.4301(f)); or

(2) Is in default by failing to comply with any other covenant or obligation of such guaranteed or insured loan which failure persists for a continuing period of 90 days after demand for compliance therewith has been made, except that if the default is due to nonpayment of real estate taxes, the notice shall not be required until the failure to pay when due has persisted for a continuing period of 180 days.

(b) *Partial payments.* A partial payment is a remittance on a loan in default (as defined in § 36.4301(g)) of any amount less than the full amount due under the terms of the loan and security instruments at the time the remittance is tendered.

(1) Except as provided in paragraph (b)(2) of this section, or upon the express waiver of the Administrator, the mortgage holder shall accept any partial payment and either apply it to the mortgagor's account or identify it with the mortgagor's account and hold it in a special account pending disposition. When partial payments held for disposition aggregate a full monthly installment, including escrow, they shall be applied to the mortgagor's account.

(2) A partial payment may be returned to the mortgagor, within 10 calendar days from date of receipt of such payment, with a letter of explanation only if one or more of the following conditions exist:

(i) The property is wholly or partially tenant-occcupied and rental payments are not being remitted to the holder for application to the loan account;

(ii) The payment is less than one full monthly installment, including escrows and late charge, if applicable, unless the lesser payment amount has been agreed to under a written repayment plan;

(iii) The payment is less than 50 percent of the total amount then due, unless the lesser payment amount has been agreed to under a written repayment plan;

(iv) The payment is less than the amount agreed to in a written repayment plan;

(v) The amount tendered is in the form of a personal check and the holder has previously notified the mortgagor in writing that only cash or certified remittances are acceptable;

(vi) A delinquency of any amount has continued for at least 6 months since the account first became delinquent and no written repayment plan has been arranged;

(vii) Foreclosure has been commenced by the taking of the first action required for foreclosure under local law;

(viii) The holder's lien position would be jeopardized by acceptance of the partial payment.

(3) A failure by the holder to comply with the provisions of this paragraph may result in a partial or total loss of guaranty or insurance pursuant to § 36.4325(b), but such failure shall not constitute a defense to any legal action to terminate the loan.

(Authority: 38 U.S.C. 1803(c)(1))

[45 FR 31065, May 12, 1980]

STATEMENT OF
THE NATIONAL ASSOCIATION OF HOME BUILDERS
before the
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
on the
VETERANS' HOME LOAN GUARANTY RESTRUCTURING AND SOLVENCY ACT OF 1989 (S. 1158)

June 22, 1989

Mr. Chairman and Members of the Subcommittee:

My name is Jim Irvine, I am from Portland, Oregon, and am Chairman of NAHB's Federal Government Affairs Committee. I am testifying on behalf of the 155,000 members of the National Association of Home Builders.

Mr. Chairman, we appreciate this opportunity to appear before you to express our views on proposed legislation before the Committee on the VA Home Loan Guaranty Program. I have been involved in this Program since 1973.

Today, you have asked for our views on the Veterans' Home Loan Guaranty Restructuring and Solvency Act of 1989, which was introduced in the Senate on June 9, 1989 (S. 1158). As you are aware, the House passed a similar bill (H.R. 1415) on June 7, 1989. Before enacting this legislation, we urge you to analyze its effects and impact on the VA program. You also asked us to comment on S. 404 and the Administration's bill, S. 898, both of which extend the current one percent VA fee for two more years.

INTENT OF THE PROGRAM

Mr. Chairman, it is important that the VA Home Loan Guaranty Program be maintained and run in an efficient manner. Congress passed the VA Home Loan Guaranty Program in 1944 so that veterans returning from the war could have an opportunity to buy a home and achieve the American dream. This program was created as an entitlement for the men and women who fought in World War II and was extended to those who served in subsequent times of both war and peace. They were given this benefit because they did not have the opportunity to raise the necessary capital for a downpayment for a home, or to establish a credit rating during the period of time they served our country.

This program has been in existence for forty-five years and changes should not be made without careful consideration as to why the program was created in the first place, whether it will continue to attract qualified members into the service and whether it will remain as a benefit to those it was meant to serve. We urge that any changes to the operation of the program in the future be carefully made without jeopardizing the benefit nature of the VA guaranty.

IMPACT OF THE LOAN GUARANTY

Mr. Chairman, there has been concern that the Loan Guaranty Revolving Fund (LGRF) has required appropriations over the past few years to sustain the viability of the VA Home Loan Program.

From the inception of the program in 1944, until 1961, the VA program was funded through appropriations. It was then that the Loan Guaranty Revolving Fund came into existence to provide funding for the program. Up until the past six years, the program under the LGRF was self-sustaining.

A number of factors can be attributed to the losses the LGRF is now experiencing. First, severe downturns in regional economies since the early 1980's, for example, in the Great Lakes area and in the oil and agriculture dependent states recently, have caused high foreclosures and claim rates. This has precipitated drains on the revolving fund which require additional appropriations.

Second, the flow of income to the fund has been altered by Administration policies. The Direct Loan Revolving Fund (DLRF) which supplemented the LGRF was terminated in 1981. It was common practice for transfers to be made from the DLRF to the LGRF when a deficit occurred. Additionally, the Administration is requiring the VA to sell its vendee loan portfolio, (direct loans made to new buyers to purchase foreclosed homes) which will no longer bring in principal and interest payments, disrupting the income stream formerly realized by the Loan Guaranty Revolving Fund.

It must now be taken into consideration, however, that the economy is turning around in some depressed areas and that future appropriations may not need to be as substantial as those needed in the past few years.

For example, even in Houston, Texas, one of the most depressed areas during the recent economic downturn, figures are showing a positive outlook. Building permits, which are an indicator of future housing starts, increased in the Houston area by 24 percent form 1987 to 1988.

Total employment in Houston increased from 1.401 million in December 1987 to 1.448 million in December 1988. This is a 3.3 percent increase compared to a nationwide figure of 2.4 percent during the same period. Houston's unemployment figures are consistent with this trend, dropping from 6.7 percent to 5.4 percent over the same time frame. This is a very substantial decline considering the deep recession that Houston experienced over the past few years. The decline in Houston's unemployment rate is significantly more than the national unemployment rate, which declined from 5.6% to 5.2% during the same period.

Before passing legislation to make permanent changes in the program to solve the revolving fund problem, the fundamental question of why the program was created and the constituency that it serves must be carefully analyzed.

VETERANS' HOME LOAN GUARANTY RESTRUCTURING AND SOLVENCY ACT OF 1989

The Restructuring and Solvency Act was introduced to try to gain solvency in the VA Home Loan Guaranty Program. NAHB is concerned, however, that this legislation will not achieve its required objective of making the program actuarially sound.

Changing forty-five years of history, which has successfully served over 12.5 million veterans, needs to be carefully and thoroughly considered.

Under the Committee bill, S. 1158, which is similar to legislation passed by the House on June 7, the veteran would pay a 1 1/4 percent fee. The government would "share" in this program by contributing a 1/4 of one percent premium during each of three years. A veteran making a downpayment of 5 percent or more would only pay a 3/4 percent fee. The Senate bill would further reduce the fee to 1/4 percent, if a 10 percent downpayment were made. Premium collections would be used to establish a reserve fund to offset future losses from foreclosures and the veteran would be absolved from debt by the VA if the loan went into default.

We have expressed reservations about the changes this plan will make in the program. While the program may have the appearance of working, there are many concerns which must be examined before passing this legislation:

1) A two percent fee (including the 1 1/4 percent veteran fee and 3/4 percent government fee) may be insufficient to cover losses in the program on new loans. The fee may have to be higher to make the program actuarially sound. In all likelihood, some initial capital infusion or additional appropriations may be necessary, as well.

A recently released Peat Marwick study on mortgage insurance options for the VA Home Loan Guaranty Program includes comments on H.R. 5221, the Mortgage Indemnity Act passed in 1988, which is similar to H.R. 1415 that passed the House earlier this month and S. 1158. The Peat Marwick report emphasizes that a deficit balance would be created under the bill. The report states:

> Given the present structure of H.R. 5221 the Mortgage Indemnification Fund Balance goes to a deficit balance by 1993, from which it does not emerge through the year 2023. Investment income provides little benefit under this program since the Fund's balance becomes negative after four years. The increase in funding fee income generated by this program appears negated by the additional risk of foreclosure associated with the removal of liability from a veteran upon defaulting on a VA loan.

We suggest that the VA be asked to determine what level of government contribution would be required to make the program work. We urge that it not be an increase in the veteran's contribution.

2) We also are concerned about the provision in S. 1158 that allows a fee increase of up to 20 percent if the Secretary determines the guaranty fund would become insolvent within 24 months after the proposed increase. Even though Congress must be notified of such fee increases on loans or assumptions in the President's annual budget submission, it still provides a mechanism for a built-in fee increase for which the veteran would

be responsible. We urge again that any increase in fee revenue be generated from additional contributions from the government and not the veteran.

3) Under S. 1158, a veteran who makes a downpayment of 5 percent or more would only have to pay a 3/4 percent fee or a 1/4 percent fee for a downpayment of 10 percent or more. This could reduce fees for over 25 percent of veterans who make a downpayment. With less money coming into the fund, the self-sufficiency factor could again be overestimated. This would also cause new homebuying veterans, who would be less likely to have a downpayment, to pay more, the opposite of what the Committee should be trying to achieve.

4) Two revolving funds would now exist and neither one would be self-sufficient. The current Loan Guaranty Revolving Fund (LGRF), which is not backed by loss reserves would continue to need capital infusions to pay for losses. The LGRF would no longer benefit from new loan fees coming in to supplement the fund. The Home Loan Guaranty Fund not only fails to help supplement the LGRF but it would require appropriations for the government's share of the premium. The federal government would then have to appropriate funding for two separate revolving funds that are not self-sustaining.

5) Because the government would be making a contribution to the new Home Loan Guaranty Fund on behalf of the veteran, an estimate of this amount would have to be appropriated each year by the Congress. We are concerned that this estimate may not be enough to cover the government's cost and that it will, in effect, put an artificial ceiling on the program. A similar experience occurred in 1986, when, under the requirements of the Gramm-Rudman-Hollings Deficit Reduction Act, Congress twice had to raise the ceiling on the aggregate loan amount needed to fund the program. This caused unnecessary delays in administration of the program. While the VA Home Loan Guaranty Program was subsequently exempted from the sequestration provisions that created the ceiling, the Guaranty Restructuring and Solvency Act would create another one.

6) One of the purposes of S. 1158 is to release the Veteran from liability if his loan goes into foreclosure. For this "indemnity," he would pay an increased fee. It is important to point out, however, that the veteran may be getting only partial protection under the bill. The indemnification provision in the legislation only gives protection from the Veterans Department, not from losses that may be incurred by the

lender. If the Administration continues its "no bid" policy whereby the lender ends up with a foreclosed property rather than the VA, fewer veterans will realize the full benefit of this provision. In 1988, almost 25 percent of VA foreclosed properties were "no bids." This means that one in four who would be buying indemnification would not fully receive it.

Additionally, many states have passed anti-deficiency laws, which prohibit deficiency judgments against those who have already had the trauma of losing their home. The veteran could be buying mortgage indemnification to protect against something that many state laws already prohibit.

We appreciate the fact that the Congress has decided to face the issues we raised about the entire concept of indemnification and is considering restructuring its application in cases of fraud, misrepresentation, bad faith and an unwillingness of borrowers to meet their obligations.

And finally, the Committee must thoroughly analyze the precedent-setting nature of the action being proposed. For example, could this kind of relief be made available to veterans under the existing program? What about borrowers under other federal programs?

We are supportive of the concept in S. 1158 that permits veterans to purchase additional entitlement under the loan guaranty program. This kind of innovative flexibility would enhance overall program utility.

This legislation allows a veteran to acquire an additional $10,000 in loan guaranty by paying a 0.1 percent fee for each additional $1,000 in entitlement. The legislation states that the total of the guaranty and any downpayment cannot exceed 25 percent of the purchase price with a waiver allowed if points are excessive. We support this concept since it would be beneficial both to first-time homebuyers and veterans who live in high cost areas.

In conclusion, we are concerned that the Veterans' Home Loan Guaranty and Restructuring Act, which makes sweeping changes in the program, may not achieve its stated objective of making the Home Loan Guaranty Program actuarially sound. Retaining the benefits of the program must also be considered when making changes in this long standing entitlement program.

ONE PERCENT FEE EXTENSION

Both S. 404 and S. 898 extend the expiration date of the current one percent fee for two years. We are pleased that this loan fee was not made permanent as was recommended in the FY '90 budget submission by the Administration.

"NO-BIDS"

Mr. Chairman, we are pleased with the provisions in S. 1158 and S. 404 which extend the "no bid" formula (process where by the lender, rather than the VA acquires VA foreclosed property) for two years. We are concerned, however, with the exception clause in S. 1158 which was added to allow imputed interest charges of one-half of the amount by which the cost of borrowing the funds necessary to acquire the property exceeds the cost of borrowing the funds that would be needed to pay the guaranty.

The Deficit Reduction Act of 1984 provides a formula that requires the VA to pay off the loan guaranty or "no bid" if it is less costly to the government than acquiring the defaulted property. This occurs when the total indebtedness, defined as unpaid principal plus accrued interest exceeds the net value by more than the guaranty. The conference report on the 1984 act made it clear, however, that Congress did not intend for the "no bid" formula to include the Government's borrowing costs. To change this policy, the conference report emphasized the VA must notify Congress by February 1, of the preceding fiscal year of the proposed change.

Mr. Chairman, we are addressing this issue because of the impact it is having on VA lenders. We are concerned that lenders will be discouraged from participating in the program if the "no bid" formula results in higher level of foreclosed properties to be disposed of by lenders. If lenders are reluctant to participate in the program, it becomes much more difficult for veterans to obtain loans and become homeowners.

We urge you to take action against proposals that would add to the cost of funds by calculating an imputed interest charge when the VA determines whether or not to acquire a foreclosed property. We also urge you to extend the "no bid" formula beyond the FY '89 expiration date.

LOAN ASSET SALES

We continue to be concerned with the Administration's policy decision to sell the loan assets of the VA and other federal agencies. Our concern is with the overall impact of the proposal upon the long term economic health of the various programs. In deciding which assets to sell, careful consideration must be given to assessing the true value of the income stream of the asset being sold. We urge that any short-term budgetary gain be balanced against the long-term loss of the income stream in determining the actual "value" of the asset sale and the long term implications and loss to the program.

ADJUSTABLE RATE MORTGAGES/RISING INTEREST RATES

Mr. Chairman, we urge you to support a VA adjustable rate mortgage (ARM) for veteran homebuyers. We are pleased that the House passed an ARM pilot program during deliberations on the 1987 VA Housing bill, but are disappointed that it was dropped in conference. We urge that a pilot program be implemented again but urge that there be demonstration programs in more than one regional office, including a high cost area. The Committee might also consider a nationwide demonstration program.

The Veterans Department is the only major mortgage market participant without an ARM, yet 60 percent of the loans made last year were ARMs. A VA ARM is necessary to modernize the VA Home Loan Guaranty Program. Last year's Rouse-Maxwell Housing Task Force report, "A Decent Place to Live," also recommends updating the VA program to include an adjustable rate mortgage. The report emphasizes that an ARM is necessary to make the program fully responsive to market developments.

Concern has been voiced about the fact that veteran homebuyers are at the lower end of the affordability scale and could be negatively impacted by rising ARMs. With prudent credit underwriting and reasonable interest caps, homebuyers should generally not suffer from "payment shock" as upward adjustments occur.

We would be pleased to work with Congress, the Veterans Department and the veterans organizations in establishing a viable ARM alternative under the VA program.

FEDERAL CREDIT REFORM

The National Association of Home Builders strongly opposes credit reform measures which attempt to restrict federal mortgage credit activities of the Veterans Department and other government housing programs. The credit reform legislation supported by the Administration would change the way federal credit programs are treated in the budget. It would require federal agencies to seek direct appropriations from Congress equal to the difference between what private sources would charge for the loan and the fee charged by the government. This approach overstates the cost of the program and reflects the Administration's position that the federal government should have a limited role in providing housing assistance. We reject this proposal and urge Congress to oppose it also, since this is yet another attempt to restrict federal housing credit.

CONVERSION OF HUD CONDITIONAL COMMITMENTS TO VA CRVs

The Veterans' Department recently changed its policy on accepting HUD appraisals made by staff appraisers of a Direct Endorsement lender. This reverses a practice that has been in effect since the Department of Housing and Urban Development (HUD) Direct Endorsement Program began in 1983. While the VA will still accept appraisals from HUD, which are done by an appraiser from an approved list selected on a rotating basis, it prohibits the acceptance of HUD conditional commitments of a lender's appraisal, if it is made by one of its staff.

We consider it proper that applications made to VA be processed by an appraiser chosen on a rotating basis. However, we believe it is also proper that applications made to HUD are processed using FHA procedures. The interagency agreement between HUD and VA obligates each Department to accept the other's determinations of value on a reciprocal basis. This practice has been in effect since 1981 and should not be altered. Reciprocity among government agencies concerning federal housing programs has been exceptionally helpful in speeding the process in obtaining home loans. Abrupt and retroactive changes in program guidelines such as this will discourage lenders from participating in the program. This will cause additional delays for veterans returning from the service to obtain a home loan.

Because of VA's policy change HUD has already sent a directive to its field offices to no longer accept Direct Endorsement lender staff appraisals for conversion to HUD conditional commitments if it is intended to be used for VA Loan Guaranty purposes. NAHB passed policy concerning this problem and we urge Congress to express its concern as well. (Attachment A)

DIRECT APPROVAL OF APPRAISAL REGULATIONS

We also urge Congress to seek prompt implementation of the 1987 VA Housing Act (P.L. 100-198) which provides for direct approval of appraisals by VA lenders for new construction. Timely appraisals of property are critical in the new home market and this legislation would substantially shorten the time involved to process VA loans. Proposed regulations, which were issued on May 11, 1989, only apply to existing housing, and, to a very limited extent, to new construction. For example, only new units older than one year or new units covered with a ten year warranty would be included under these regulations.

Last year, our Board of Directors passed policy endorsing the immediate adoption of direct approval of appraisals for new construction by the VA. We urge you to seek immediate implementation of this program for new construction, which will be of particular benefit to new homebuying veterans in the marketplace.

CONCLUSION

Mr. Chairman, in conclusion, I urge that any action of the VA Committee take into account the entitlement nature of the VA Home Loan Guaranty Program. Legislative initiatives that erode the forty-five year benefit of the program should be carefully analyzed by the Congress. Congress must continue the responsibility of providing assistance to veterans so that they will have the opportunity to obtain affordable housing.

Thank you for allowing us to present our views. I would be pleased to respond to your questions.

ATTACHMENT (A)

May 18-23, 1989
Washington, D.C.

NAHB Resolution

VA/FHA Reciprocity on Appraisals

WHEREAS, the Department of Veterans Affairs has issued instructions prohibiting the conversion by VA of Department of Housing and Urban Development conditional commitments based on appraisals performed by Direct Endorsement lenders staff appraisers;

WHEREAS, the VA has been converting HUD conditional commitments based on such appraisals since the Direct Endorsement program began in 1983;

WHEREAS, converting HUD conditional commitments is consistent with a 1981 inter-agency agreement under which the agencies agreed to accept each other's determinations of value on a reciprocal basis; and

WHEREAS, the VA's action will result in unnecessary and costly processing delays to builders and as a result adversely affect housing affordability;

NOW, THEREFORE, BE IT RESOLVED that the National Association of Home Builders urge the Department of Veterans Affairs to modify its April 1989 instructions prohibiting the conversion by the VA of the Department of Housing and Urban Development's conditional commitments based on appraisals performed by Direct Endorsement lenders staff appraisers to allow such appraisals in those cases where HUD performs a full appraisal review, thereby reinstating the practice of reciprocity with FHA with respect to appraisals that has been followed since 1981.

BOARD OF DIRECTORS ACTION: APPROVED

STATEMENTS ON S. 1145 TO REESTABLISH THE ADVISORY COMMITTEE ON NATIVE AMERICAN VETERANS AND S. 1146 TO CONDUCT A NATIVE AMERICAN VETERANS DIRECT HOUSING LOAN PILOT PROGRAM

BY MEMBERS OF THE ADVISORY COMMITTEE ON NATIVE AMERICA VETERANS

DR. SAMUEL K. APUNA,
DAVID ORTEGA SHAW, AND
RAYMOND C. FIELD

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STATEMENT ON S.1145 by MR. FIELD -

In December, 1988, the Advisory Committee passed a unanimous resolution to seek legislation reauthorizing the Committee for a 2 year period.

The Advisory Committee developed a regional and national coordinating council concepts to increase outreach, services, and benefits to Native American veterans in remote areas, involving pertinent Federal, State, and Tribal agencies. That regional concept is functioning now in New Mexico and Alaska. The National Coordinating Council needs the participation and monitoring of the Advisory Committee to ensure the implementation and effectiveness of that recommendation.

As reported above, there are few statistics on American Indian and PACIFIC ISLAND VETERANS. Native American involvement is necessary to provide meaningful veteran community participation.

Native American veterans are not obtaining homes through the Veterans Home Loan Guarantee program because private lenders refuse loans on reservations and trust territories. The Advisory Committee is developing approaches to resolve the problems our veterans encounter. Those efforts can continue if the Committee life is extended.

The Department of Veterans Affairs has no idea on the numbers and the degree affected on Native American veterans by PTSD. Only other Native American veterans can facilitate the participation in appropriate studies of our veterans suffering on PTSD.

Moreover, the Advisory Committee created and served as a vital liaison to Native veteran organizations, tribal and village governments, and individual veterans.

RECOMMENDATION OF MR. FIELD:
Pare Committee from the current 19 members to 6 members. With the foundation work accomplished, tasks must now be assigned to work with Federal agencies and Congress to implement our recommendations. Current size is too unwieldly and meetings too costly.

S.1146, AMERICAN INDIANS by MR. SHAW AND MR. FIELD

American Indian Veterans receive less than their proportionate share of D.V.A. Guaranteed Home Loans. At present, American Indian Veterans cannot receive guaranteed home loans if they reside on reservation and trust lands. American Indians shouldn't be barred from these farm and home loans just because they live on reservation and trust lands. This unintentional, but very real discrimination exists because the Federal Government holds this land in trust, and cannot transfer title as security for the loans to private lenders.

American Indian Veterans comprise 0.6% of all living veterans in civilian life but receive only 0.4% of guaranteed home loans. There is a critical shortage of housing for American Indian Veterans. Trust status of Indian lands includes reservations, individual allotments and tribal land. All three categories are trust property and are held in trust by the federal government for the benefit of tribes or individuals. Land held in trust cannot be sold without the consent of the federal government and the tribes. Trust lands include allotment trust land which is land held by the U.S. Government in trust for an individual Indian or for two or more Indians holding individual interests in common and tribal trust land which is held in trust for a tribe. The rights of individual tribal members depends on treaties, agreements, and tribal law but usually the individual has no rights to ownership of any specific parcel of tribal property. Individuals may have certain land use rights which includes occupying a particular tract of land plus grazing, fishing, and timber rights.

An issue that is frequently identified as interfering with the opportunities of a qualified Indian veteran seeking a home loan on reservation property is tribal communal owndership. Individual tribal members can never own their particular tract of reservation land nor can the land be sold to non-Indians. Land usage is usually based on agreements or leases. In so far as the D.V.A. and B.I.A. are concerned the issue of tribal ownership does not pose a problem. DVB Circular 26-65-16 dated May 27, 1965, Memorandum of Understanding between the Commissioner of Indian Affairs and the Administrator of Veterans Affairs waived the need for leases to be freely assignable and transferable with respect to applications from Indian veterans for V.A. guaranteed, insured, and direct loans for which leasehold interests in trust or restricted land are used as security. Other conditions must be met including the length of the unexpired term of the lease, however, assignability of the leasehold interest is not a condition of acceptace. This memo of understanding probably had greater applicability during the period the V.A. offered direct home loans. The need for the D.V.A. and B.I.A. to enter into a memo of understanding to waive the need for "freely assignable" leases implies that there is difficulty in reassignment of leasehold interests.

Following the termination of the D.V.A. Direct Home Loan Program the lending institution became the principal component of the D.V.A. guaranteed home loan program. Lending institutions are reluctant to provide loans to qualified Indian veteran applicants:

A. Assignability/transferability of property or leasehold interests: reservation land is communally owned and cannot be deeded to individuals or corporations. Leasehold interests, if assignable, would have little security value to a lending institution. As referenced in 25 Code of Federal Regulation (CFR Ch. I (4-1-87 Edition) 162.12) leases, sub-leases, and assignments are reassignable:

> "(d) With the consent of the Secretary, leases of tribal land to individual members of the tribe or to tribal housing authorities may contain provisions permitting the assignment of the lease without further consent or approval where a lending institution or an agency of the United States makes, insures or guarantees a loan to an individual member of the tribe or to a tribal housing authority for the purpose of providing funds for the construction of housing for Indians on leased premises; provided, the leasehold has been pledged as security for the loan and the lender has obtained the leasehold by consent of the Secretary also contain provisions permitting the lessee to assign the lease without further consent or approval."

B. V.A. Loan Guarantee Program:

Lending institutions tend to perceive Indian applicants as poor credit risks..

C. Resale: In the event of default by the Indian veteran, the lending institution could encounter difficulty accessing the reservation for repossession purposes and could have difficulty selling the property given the low demand for non-HUD housing on reservations.

Discussion:

Any modification of the V.A. Loan Guarantee Program would need to address the issue of re-assignability of property to lending institutions, the percent of the loan that is guaranteed by V.A., and the process of repossession and resale in the event of foreclosure. Since the tribes own the land, the issues of property assignability, repossession and resale would need to be negotiated with tribes on an individual tribal basis.

Marketability of Property: In entering into a loan arrangement with a qualified Indian veteran applicant the lending institution must determine if leasehold interests offer sufficient loan security and can be resold in the event of foreclosure. The marketability of reservation property is obviously more restricted than off reservation property; however, the demand for such properties would may vary greatly among tribes. Factors such as the size of the tribe, the geographic location of the tribe, the number of commercial enterprises on the reservation, and the number of B.I.A. and I.H.S. employees on or near the reservation would need to be considered as determinants of marketability. How much of a demand is there for a particular piece of property within the reservation milieu? Marketability assessment would need to be specific to the property and tribe in question.

Re-establishment of the D.V.A. Direct Home Loan Program would eliminate the need for the lending institution and would simplify the lending process. Policy discussions with B.I.A. and tribes regarding property assignability, repossession and resale would need to be negotiated. The D.V.A., the individual tribes, and/or the B.I.A. would need to agree on how any losses created by defaulted loans would be absorbed or shared, for example:

(a) In the event of a forfeiture of an Indian member's beneficial interest of a leasehold interest in allotment trust land, the appropriate department shall first offer it for sale to an Indian member having a benefical interest in the land on which the default occurred, at a price equal to the unpaid balance of the contract price.

(b) In the event of a forfeiture, the appropriate department shall secondly offer and/or give preference to any qualified Indian Veteran approved by the tribal government at a price equal to the unpaid balance of the contract price.

(c) In the event of a forfeiture, the appropriate department shall thirdly offer it for sale to the tribe for whom the land is held in trust at a price equal to the unpaid balance of the contract price. If the tribe fails to accept the offer, the department shall next offer it to the United States Secretary of the Interior at the same price.

Where all the parties to whom the department is required to offer the property under subdivision (a) or (b) the department shall give first preference to any good faith offer by a person approved by the tribal government on which the allotment land is sited.

Important Considerations

1. Definition of home sites on reservation trust land: Where more than on individual is given a home site, a survey of this area would need to be performed in a reasonable period of time, 45-60 days.

Discussion: Tribes and the Bureau of Indian Affairs (BIA) would need to prioritize homesite surveys in order expedite the processing of any type of loan programs for veterans. The cost of such surveys and the appropriate survey responsibility would need to be established prior a participation contract being engaged. Authority to grant a homesite to an eligible veteran by the Tribe or BIA would also have to be established in a reasonable time frame.

2. Reasonable access to homesite - an access to the homesite would have to be established. The Tribe and or BIA would need to be considered as the primary agent in this matter.

3. Sufficient income to support mortgage payment - a demonstrated income to support the mortgage payment would need to be demonstrated by the veteran and spouse prior to qualification for home loan beneefits. The VA could and would consider various options to this area:

a. Modification of credit.
b. The growing of food on the property (potential) in lieu of cost factors associated with food purchases.
c. Raising of livestock in lieu of cost factors associated with food purchases.
d. Combining veteran and spouses incomes to support mortgage payments over a long period of time.

4. M.O.U. for 1965 according to D.V.A. is still in effect. A clarification or update from the BIA as to this M.O.U. would be helpful.

5. Joint funding between native governments and federal government in which tribes have a stake in the management of a loan program or a variety of loan programs. A localized loan program overseen by a sound auditing program (C.P.A. under contract) and parameters for operation in order to assure continued funding will lend credibility to the program training would be provided to tribes by the D.V.A. inclusive of but not limited to appraising, property management, credit reporting etc.

Summary: The underutilization of the V.A. Loan Guarantee Program by qualified Indian veterans for guaranteed home loans on reservation land appears to be related to the following issues: assumed inability of the Indian applicant to obtain title to land on reservations, assumed difficulty in reassigning title to lending institutions, assumed problems associated with accessing reservation in the event of foreclosure, assumed lack of a market for non-HUD housing on reservations and possibly the insufficiency of the V.A. guarantee.

Efforts to address the problems associated with the D.V.A. Loan Guarantee Program would require among other things, collaborative educational activity at local and area levels aimed primarily at the tribes and lending institutions. The tribes need to target specific lending institutions for the purpose of demonstrating the effectiveness of tribal foreclosure mechanisms and to offer information on the marketability of the property in the event of default. Although many of the same issue would remain, the reimplementation of the D.V.A. Direct Home Loan Program would eliminate the need to include lending institutions in the educational process and would expedite the correction of the problem.

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S.1146, PACIFIC ISLANDERS by DR. APUNA

Problem: The Veterans of America Samoa are experiencing difficulty in acquiring adequate affordable housing.

Discussion:

1. The residents of America Samoa do not have adequate financial institutional base to support them in constructing or purchasing family homes. The problems experienced by veterans of America Samoa in acquiring single family homes are unique to that part of the Pacific, therefore the solutions used to support veterans purchasing homes in the Continental United States or other Pacific Islands, such as Hawaii, can not be used in Samoa.

2. America Samoa has unique problems such as:

a. Their lands are tribal owned under the Matai system.

b. There exists no credit bureau system, for verifying credit reliability.

c. There are no Title Companies in America Samoa.

d. Titles are manually recorded with the Government issuing a standard disclaimer on titles issued.

e. There is no qualified Appraiser on the Island.

f. There is very little zoning codes and the government still uses their 1964 building code, which is outdated.

g. There are no plumbing or mechanical codes to govern standardized construction.

h. And overall construction is rated poor, by American standards.

3. Because of the Matai tribal land ownership system, the Bank of Hawaii, a major lending agency in America Samoa, limits their construction loan to terms of 20 years for a maximum of $30,000 based on improvements to the land only. Information received shows that there is a waiting list for loans from the Bank of Hawaii back to 1981.

4. The Housing and Urban Development is undertaking a pilot project of five loans for single family homes. This action is very favorable but the numbers too small to affect the veterans waiting for family home loans.

5. There are solutions to the housing problem confronting the American Samoan veterans. However, the solutions can not be developed from a desk in a distant office. A team of Veterans Administration experts, spending sufficient time in Samoa could, with assistance from local officials develop viable solutions.
The Home Loan Guarntee Office personnel of the Honolulu District Office of the Veterans Administration are aware of the problems confronting the American Samoa's veterans. However, because of limited travel funds and personnel have not been able to address their problems.

Recommendation:

That the Veterans Administration be directed to develop a pilot project addressing the plight of the veterans in America Samoa who need homes. That the Honolulu District Office be tasks with the responsibility to develop and operate the pilot. That they be provided funds for additional personnel and travel to accomplish the project. That the Advisory Committee to Veterans Administration for Native American Veterans be tasked to independently monitor the progress of the pilot project and prepare a after action report on the project.

AMVETS
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102/01/472

July 7, 1989

The Honorable Alan Cranston
Chairman, Committee on Veterans Affairs
United States Senate
Washington, DC 20510-6375

Dear Senator Cranston:

AMVETS wishes to thank you for your request for comments on the various bills listed in your correspondence dated June 23, 1989.

Based on your request that our written comments be received by Thursday, July 6, 1989, leaving very little time for an indepth analysis of each pending bill, we offer the following written statement:

S. 505 - While AMVETS has no official position via the resolution process or mandate from our National Convention body, however, we certainly pose no objection to favorable consideration by the Congress.

S. 613 - AMVETS has in the past and will continue to oppose any legislation which attempts to Index Compensation and D.I.C. COLA's. We hope that the Congress will never acquiesce to the Administration's year in and year out proposal in this area. There can be no benefit in doing away with the personal Congressional attention that veterans currently receive when annual COLA's are considered.

S. 860 - AMVETS supports this legislative initiative and would hope that by its enactment the Administration would be required to propose a realistic budget for America's veterans.

S. 1110 - Once again, we have no official position to support S. 1110, however we in no way oppose its passage.

S. 1141 - Here again AMVETS has no official position, however we would not oppose passage of this bill.

S. 1145 - AMVETS would not oppose the re-establishment of the Advisory Committee on Native American Veterans. However, we question the need for a Congressional mandate. The Secretary

American Veterans of World War II, Korea and Vietnam

of Veterans Affairs is currently empowered under PL 92-463 to establish the very type of Advisory Committee called for in this legislation.

S. 1146 - We are unable at this time to support or oppose this legislation due to the limited response time. As I am sure you would agree a great deal of research into this proposal would be required before a sound decision could be made in this area.

S. 1147 - AMVETS finds nothing objectionable herein and therefore supports.

S. 1195 - AMVETS views S. 1195 as an overall effort to enhance the Department of Medicine and Surgery's ability to better serve this nation's veterans. We are aware that no measure is a panacea with respect to the critical need for health care professionals within the system and we therefore applaud the efforts of you, Mr. Chairman, Mr. Murkowski, Ranking Minority Member, and all the members of your Committee for their work and commitment in this area. AMVETS supports the overall legislative goals in S. 1195.

S. 1211 - AMVETS supports this legislative initiative which will ensure employment and retention of highly qualified physicians and dentists.

S. 1243 - Mr. Chairman, AMVETS is generally supportive of this legislation and we are certainly in agreement with the need for initial funding as well as the need to secure appropriate operating space for the New Court.

One area of concern we do have is the proposed exception to Title 5, United States Code, wherein the New Court will have the authority to hire up to 35 employees without regard to the competitive hiring requirements. It is felt that veterans preference must be safeguarded during any hiring process under which any employee is selected to serve in any capacity with respect to the New Court of Veterans Appeals.

S. 1188 - AMVETS has no problem with the proposed checks and balanced incorporated herein with respect to the needs based on programs administered by DVA. We would hope however, that passage of this measure would not lead to a non cost effective "witch hunt" wherein deserving beneficiaries may suffer.

This concludes my statement and again thank you for the opportunity to review and comment on these issues of importance to America's veterans.

Sincerely,

Wesley J. Riker

Wesley J. Riker
Deputy National Service Director

WJR/hes

CALIFORNIA ASSOCIATION OF REALTORS

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LEO SAUNDERS
President

July 20, 1989

The Honorable Alan Cranston
112 Senate Hart Office Building
United States Senate
Washington, DC 20510

Dear Senator Cranston:

As President of the 125,000 member California Association of REALTORS®, I am writing to you regarding S. 1158, the Veterans Home Loan Guaranty Restructuring and Solvency Act of 1989, which we understand is scheduled to be marked-up by the Veterans Affairs Committee on Thursday, July 27. C.A.R. is commenting on S. 1158 because of the crucial importance of the VA Home Loan Program in California to both veterans and real estate practitioners alike. C.A.R. estimates that in 1988 nearly 28,000 California veterans purchased a home with a VA guaranteed mortgage.

The VA Home Loan Guaranty Program has played an indispensable role in addressing the housing needs of California's first-time and moderate-income veteran homebuyers. Our data show that in 1988 more than 63 percent of newly-originated VA loans in California went to veterans purchasing their first home. For comparison's sake, only 34.6 percent of buyers using new conventional financing in 1988 were purchasing their first home. Similarly, buyers using VA financing had a median income of only $37,000 in 1988, much less than the $60,000 median annual income of purchasers using conventional mortgage financing.

Veteran homebuyers also benefited heavily from the VA program's no-downpayment feature. C.A.R.'s research indicates that fully one-half of California's veterans using the VA financing in 1988 relied on the program's unique no-downpayment feature to complete the purchase of their home. From these statistics, it is clearly evident that the VA program assists precisely the moderate-income and first-time homebuyers it is intended to serve. With home prices in California running at more than twice the national level, the program is even more vital because of the higher downpayments and incomes needed to purchase a home in our state.

While we have some specific concerns regarding the individual sections of S. 1158, we wish to commend you for seeking to preserve the VA Home Loan Guaranty Program via the introduction of the Veterans Home Loan Guaranty Restructuring and Solvency Act. C.A.R. believes that the recent losses of the VA program

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are chiefly the result of regional economic downturns in energy and agricultural dependent areas of the United States, and the attendant burdens in handling the magnitude of repossessed properties that has beset the VA in recent years. We thus believe that the recent unprecedented losses of the VA guaranty program may be largely transitory. In the present deficit-conscious era where spending on many popular programs has been slashed, however, we realize that action to reform the program may now be necessary. There simply are not unlimited funds available to underwrite the recent and continuing losses of the loan guaranty program. As you are well aware, approximately $2.3 billion in supplemental appropriations have been needed to operate the program since 1983 and a total of almost $800 billion in emergency funding will probably be necessary to see the program through this fiscal year.

Loans Fees/Release of Liability

C.A.R. would like to preface its remarks on S. 1158 by stating that we have traditionally been opposed to increases in the user fees charged for obtaining VA-guaranteed mortgages because of the detrimental effect higher funding fees would have on California's veteran homebuyers. On a more philosophical basis, C.A.R. has opposed VA funding fee increases because they would signal a weakening of the nation's commitment to homeownership. In its budget proposals and in legislation introduced by request, the Reagan Administration repeatedly proposed sharply higher funding fees for the VA loan guaranty program, as well as on many of the government's other housing credit programs. C.A.R. strongly opposed these past attempts to increase housing credit user fees and we again salute the wisdom of the Congress for having rejected them.

However, C.A.R. has altered, in this particular case, its longstanding opposition to increases in the user fees charged for use of government mortgage credit programs. We believe the fee increase proposed in your bill is fundamentally different from fee hikes proposed by the Reagan Administration in the past. It differs precisely because it has not been proposed simply to increase revenues and narrow the budget deficit on the backs of the nation's veteran homebuyers, but instead is being offered to help preserve the Home Loan Guaranty Program as an entitlement for the nation's armed services members. We thus support the higher, 1.25 loan fee and the creation of a new Home Loan Guaranty Fund as a means of both placing the loan guaranty program on a sounder financial footing, while at the same time largely preserving the entitlement nature of the program. While S. 1158 would slightly increase the guaranty fee charged for VA mortgages, the no-downpayment feature of the program would be preserved and veterans would continue to benefit from a low cost loan program that simply does not exist in the conventional mortgage market.

We also support the provision of S. 1158 that releases veterans from liability to the VA in the event of default on a VA-guaranteed loan. Again, because the veteran receives a tangible benefit (i.e., release of liability) in exchange for a slightly higher funding fee, we believe S. 1158 is fundamentally different from the housing taxes called for by the previous Administration's user fee proposals. To ensure that the release of liability feature of S. 1158 is not abused, we strongly support the bill's provision *not providing* a release of liability in cases where fraud, misrepresentation or bad faith is involved in obtaining or assuming a VA-guaranteed home loan.

Assumption Fee Increase

C.A.R. has historically opposed restrictions (i.e., fees or credit review requirements) on the assumability of VA loans. Unrestricted assumability has served to increase the attractiveness and marketability of veteran's homes, especially in periods of high interest rates when a below market rate assumable loan is often the only viable means of selling a home. During the 1980-82 recession, assumable mortgages provided a crucial "safety net" for the California housing market, providing financing in more than half of all resale transactions completed during this period. However, despite C.A.R.'s opposition, an assumption fee and credit check procedures were instituted for VA loans made after March 1, 1988 with the enactment of the Veterans Home Loan Program Improvements and Property Rehabilitation Act of 1987 (Public Law 100-198).

While noting the above concerns, C.A.R. supports the proposed increase in the VA assumption fee from 0.5 percent to 0.67 percent in the spirit of Congress's efforts to generate additional monies for the new Loan Guaranty Fund and preserve the veteran's entitlement program. We are hopeful that the higher fee will not discourage assumptions of VA loans--to the detriment of California's veterans--and offset the projected increase in Loan Guaranty Fund income.

Fee Adjustment Authority

Regarding other provisions of your bill, C.A.R. opposes the section of S. 1158 authorizing the Secretary of Veterans Affairs to increase guaranty and assumption fees by up to 20 percent. While the bill grants the Congress the opportunity to accept or reject proposed fee increases, we do not believe the prerogative to set loan fees for the Home Loan Guaranty Program should be transferred from the legislative to the executive branch of the federal government. All too often over the past eight years, higher fees for use of the government's housing credit programs were proposed by the Reagan Administration purely as budgetary maneuvers, not as part of a constructive and comprehensive housing policy. Any adjustment to the loan guaranty fee that may be necessary in future years should be the decision of Congress and require affirmative legislative action, not simply concurrence with a Department of Veterans Affairs budget recommendation. We thus oppose relinquishing to the executive branch the authority to increase VA loan and assumption fees.

Graduated Reductions in the Loan Fee

C.A.R. supports the provision of S. 1158 reducing the required loan fee to 0.75 percent for veterans placing at least a 5 percent downpayment and to 0.25 percent for veterans making a downpayment of at least 10 percent. Numerous academic studies have shown that a borrower's cash equity in a home is probably the largest single deterrent against default. Because of the lower risk of default, we agree that the loan fee charged to veteran borrowers making a downpayment should be smaller than the fee charged to homebuyers making no downpayment. Moreover, a graduated fee structure gauged to the amount of downpayment should also serve to encourage veterans with sufficient resources to make downpayments, thereby further reducing defaults and benefiting the loan guaranty program. The House VA indemnity Fund bill (HR

1415) provides for a reduction in the loan fee only in the event of a 5 percent downpayment. We commend you for recognizing the reduced risks and applying the fee reduction to 10 percent downpayments. We are hopeful that the Senate provisions for graduated reductions in the loan fee will be incorporated into any final VA program legislation.

Optional Increased Entitlement Provision

Section 4 of the bill proposes that veterans be permitted to "purchase" increased guaranty entitlement. C.A.R. is, of course, aware that the optional increased entitlement provision would potentially aid veterans living in high cost housing states such as California. Veterans paying a maximum 2.25 percent loan fee would receive guaranty entitlement of $46,000. Since GNMA has historically accepted no-downpayment VA loans four times the guaranty amount, veterans would be able to obtain a no-downpayment VA guaranteed mortgage of $184,000 under the "buy-up" provision. The $184,000 no-downpayment loan permitted under the increased entitlement proposal would represent a substantial increase over the maximum $144,000 loan currently allowed under the VA program. This would obviously expand the selection of homes veterans in California could choose to purchase and we are appreciative of the fact that S. 1158 recognizes the current $144,000 maximum loan does not well serve veterans in high-cost housing areas.

Although the "buy-up" proposal attempts to address the problem of meeting veteran housing needs in high cost areas, we oppose the provision because of the increased costs veterans living in high-cost states such as California would face, as compared to their counterparts living in areas where housing is more affordable. Using the May 1989 median sales price figures for California and the U.S., veterans in the nation as a whole would pay a $1163.75 loan fee to obtain a VA guaranteed mortgage and purchase the median priced home of $93,100 with no downpayment ($93,100 x 1.25%). In California, veterans would pay a $4,140 ($184,000 x 2.25%) loan fee to receive a maximum $184,000 loan that sadly would not even purchase the median priced home of $201,930. Thus, as compared to veterans on a national basis, veterans in California would be forced to pay over a two-and-a-half times greater loan fee and for the much higher fee would not even be able to buy the average home. Veterans in California already pay higher loan fees, in dollar terms, than veterans in lower cost states by virtue of their greater reliance on larger loan amounts. This proposal would unfairly add to that burden by imposing an additional "high cost area" premium.

C.A.R. also opposes the optional increased entitlement proposal because of serious concerns over the adverse precedent it would set. If adopted for the VA program, we fear that it may only be a matter of time before "optional" increases in the FHA mortgage insurance premium (MIP) were proposed in exchange for higher FHA loan limits in high-cost areas (e.g., in exchange for the 95 percent of median sales provision proposed in the "National Affordable Housing Act" and several other bills). Because of the unfair burden that would be placed on veterans in high-cost housing states and the poor precedent the proposal would set, we oppose the section of S. 1158 proposing that veterans be allowed to "buy up" their entitlement.

A more appropriate alternative to the proposed optional "buy-up" of entitlement would be to regionalize the guaranty limits for the VA program to address the nation's radical disparities in housing prices. C.A.R. strongly believes the VA should establish regional loan guaranty entitlements that recognize the significant differences in the price of homes in various regions and states. Through the inclusion of a "buy-up" proposal, S. 1158 is clearly acknowledging that the maximum $144,000 VA loan currently permitted is largely incapable of addressing the housing needs of veterans in California and other high cost regions. Rather than increasing the program's costs to these veterans, we recommend that variable entitlement amounts be established based on regional sales prices, enabling the VA to equitably serve first-time and moderate-income homebuyers in *all* regions of the nation.

Yet another alternative to increase the effectiveness of the VA program in high cost areas--without establishing the poor "buy-up" precedent--would be to require GNMA to re-institute the two-tiered method for determining the eligibility of VA-guaranteed mortgages for mortgage securities that existed before the last entitlement increase in late 1987. Prior to the December 1987 increase in the VA entitlement amount effected by Public Law 100-198, lenders were able to pool VA-guaranteed mortgages in excess of $110,000--the old no-downpayment maximum loan amount--up to the GNMA-imposed maximum loan amount of $135,000, provided that veterans made a downpayment equal to 25 percent of the loan amount in excess of $110,000. In other words, a veteran could receive a $135,000 VA loan by making a $6,250 downpayment (25 percent of $25,000).

After the 1987 increase in the VA entitlement amount, C.A.R. repeatedly requested GNMA to reinstate the two-tiered system so that the positive effects of the statutory increase in entitlement would not be largely negated in high cost areas. Despite our requests, GNMA refused to reinstitute the two tier system, and high cost states effectively received only a $9,000 increase in the maximum VA loan, from $135,000 to $144,000. We recommend that GNMA should by law be required to accept VA mortgages with loan amounts in excess of $144,000, up to a statutorily determined maximum loan amount of approximately $185,000, by permitting veterans to make a downpayment of 25 percent of the amount in excess of $144,000. This two-tiered structure, exactly as its predecessor, would maintain a 25 percent "guaranty" for the lender/investor, using a combination of VA entitlement and veteran downpayment.

C.A.R. believes that reinstating the two-tiered structure would avoid the inequitable and poor precedent of forcing veterans in high-cost states to pay an increased guaranty fee to obtain mortgages of an amount commensurate with home prices. Moreover, this method would work to the advantage of the new Home Loan Guaranty Fund because loans in excess of $144,000 would have progressively larger downpayments, increasing the borrower's equity and reducing the likelihood of default. The reestablishment of a two-tiered system is a "win-win" situation, with both the Loan Guaranty Fund and veterans living in high-cost states benefiting.

Conclusion

C.A.R. sincerely appreciates being given the opportunity to express our perspectives on S. 1158, the Veterans Home Loan Guaranty Restructuring and Solvency Act of 1989. The VA Home Loan Guaranty Program is critically important to the many thousands of veterans who reside in California and also to the C.A.R. members who rely on the home purchases of these veterans for their livelihood. The ultimate purpose of S. 1158 (and HR 1415 in the House) is to preserve the Loan Guaranty Program and we commend you for taking decisive action to ensure that the program will be in existence to meet the housing needs of today's and tomorrow's veterans. If you have any questions regarding our testimony, please do not hesitate to contact either Leslie Appleton-Young, Vice President of Research and Economics, at (213) 739-8325 or Pete Mills, Manager of Research and Policy Analysis, at (213) 739-8272.

Sincerely,

Leo Saunders

Leo Saunders

cc: Don Edwards
Jonathan R. Steinberg
Jane G. Wasman
Michael W. Cogan
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DEPARTMENT OF HEALTH & HUMAN SERVICES
Public Health Service

Centers for Disease Control
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Written Testimony of

Vernon N. Houk, M.D.
Director
Center for Environmental Health and Injury Control
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U.S. Public Health Service

DEPARTMENT OF HEALTH AND HUMAN SERVICES

before the

U.S. SENATE
COMMITTEE ON VETERANS' AFFAIRS

Thursday, June 22, 1989

8:00 a.m.

Room 418, Russell Senate Office Building

I welcome this opportunity to submit my written testimony to the Senate Committee on Veterans' Affairs to describe the status of the Centers for Disease Control's Selected Cancers Study, as well as specific information regarding a recently completed study in Italy relating to the effects of Agent Orange.

First, I will present an update on the progress of the Selected Cancers Study and its schedule for completion. Secondly, I will present a summary of a CDC review of the Seveso Mortality Study.

Status of the Selected Cancers Study

The Selected Cancers Study (SCS) is continuing on schedule. The Selected Cancers Study is a collaborative effort of the Selected Cancers Cooperative Study Group, consisting of the CDC, 8 tumor registries, and 4 pathology review panels. The SCS is a population-based, case-control study examining the relation of military service in Vietnam to six types of cancer: Hodgkin's disease, non-Hodgkin's lymphoma (NHL), soft tissue and other sarcomas, nasal cancer, nasopharyngeal cancer, and primary liver cancer. All males with the cancers of interest who were born between 1929 and 1953 and who resided at the time of diagnosis in the geographic areas covered by the eight participating tumor registries were eligible for the study. The exposure of concern is service in Vietnam not exposure to Agent Orange. The reason is that attempts to validate exposure to Agent Orange based on military records or veterans' self reports have been unsuccessful.

As of April 28, 1989, the latest date for which a progress report is complete, we have data on approximately 65% of the cases who will comprise the final study population. A small percentage of this data has not yet been "cleaned up", i.e., checked for inaccuracies, inconsistencies and missing information. We anticipate that the final study pool will consist of approximately 1000 confirmed cases of NHL (not including those with an AIDS-related diagnosis), more than 350 cases of Hodgkin's disease (again excluding those with an AIDS-related condition), nearly 350 cases of soft tissue and other sarcomas, 60 cases of nasal cancer, 75 of nasopharyngeal cancer, and more than 120 of primary liver cancer. An analysis of NHL and Hodgkin's disease will be done on all cases, and a separate analysis will be done excluding those cases with AIDS. The Institute of Medicine (IOM) Committee concurs with this approach. We anticipate more than 200 AIDS-related NHL cases and more than 20 with Hodgkin's disease and AIDS-related conditions.

Our staff has been conducting preliminary analyses on the partial data set as it has accumulated over the past 9 months and has been presenting these analyses to a committee of the Institute of Medicine (IOM), National Academy of Sciences; therefore, we anticipate a much abbreviated time between receipt of data and availability of the final analyses.

The final reports could be available for review by the IOM and OTA by the end of February 1990. A report could be released to Congress one month later, if the release is prior to submission for journal publication. This schedule also assumes no major additional reanalyses as a result of the IOM and OTA reviews.

If an interim report is requested, this would result in a four month delay in the completion of the final reports. Such an interim report would necessarily be based on a partial data set and therefore may not be helpful in terms of policy or legislative development. In order to have reports prepared for external review in early December, CDC staff estimate that the number of cases available for analysis would comprise approximately 75% of those cases expected upon completion of the study. In addition, the preparation of interim analyses would delay the completion of final analyses because all available staff will concentrate on analysis rather than completion of data cleanup. CDC estimates that production of these interim reports will delay the completion of final reports for review by the OTA and IOM until June 1990. These reports could be released to Congress approximately one month later (assuming the reviews recommend no major additional work) if the release is scheduled before submission to peer review process required for journal publication.

Recently Completed Seveso Mortality Study

A mortality study of the population exposed to tetrachlorodibenzo-p-dioxin (TCDD) in the 1976 industrial accident in Seveso, Italy, was published in the June 1989 issue of the American Journal of Epidemiology.

In the study abstract, the authors make unjustifiably strong statements on a purported statistical association between TCDD exposure and relative risk of several cancers. These statements are not reliable because of improper methods of statistical analysis and inadequate attention to the limitations of the study. Even though the study says that there is an increased risk in some cancers, many of these are based on only one case. Reliable inferences on increases in mortality rate cannot be made based on a single case. The authors performed multiple hypothesis tests without adjusting the significance probability, which means that five (5) percent of the hypothesis tests will be declared statistically significant when the association is actually due to chance. This is recognized by the authors in the discussion section of the study, which is written with considerably more caution than the abstract. A copy of a review, prepared by staff of the Center for Environmental Health and Injury Control, of that paper is enclosed.

It should be noted that immediately following the Seveso accident, Italian authorities were assisted by several national and international technical commissions in assessing adverse health effects in the Seveso population. During these Seveso studies (references 1-4, listed at the end of the testimony), residents underwent extensive medical examinations from 1976 to 1985, and the only abnormal finding detected in a small segment of the population was chloracne.

In April 1988, a group of U.S. and Italian scientists convened to further examine the Seveso incident. Using a methodology developed by CDC to measure TCDD in human serum, blood samples collected in 1976 on Seveso residents were analyzed by CDC. CDC reported the results of these analyses in the December 9, 1988, issue of the Morbidity and Mortality Weekly Report. (A copy of this report is enclosed.) The TCDD levels detected in some of these samples are the highest ever reported in humans, up to 5,000 times the background levels. The three highest levels detected were from children who had developed chloracne, but no other known adverse health effects.

Dr. Paolo Mocarelli of the University of Milan will present a detailed report on the Seveso Birth Defects and Morbidity Study at the Fourth National Environmental Health Conference in San Antonio, Texas, on June 23, 1989. The findings from the Seveso Studies concerning birth defects; clinical, immunological, and dermatological conditions; and exposure assessments will be presented. We will forward a copy of his report as soon as it becomes available.

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Comments on the paper: Ten-year Mortality Study of the Population Involved in the Seveso Incident in 1976 Pier Alberto Bertazzi, et. al.

This paper is a mortality study of the Seveso population who were exposed to dioxin from an industrial incident in 1976. According to the paper, "The aim of this analysis was not to evaluate causal association of TCDD exposure with specific health outcomes, but rather to provide a comprehensive and coherent picture of the pattern of mortality in the population affected by the accident." However, the authors make unjustifiably strong statements in the abstract on a purported statistical association between dioxin exposure and relative risk of several cancers. These statements are not reliable because of improper methods of statistical analysis and inadequate attention to the limitations of the study recognized by the authors themselves in the discussion section of the paper.

In the exposed zones, a decrease in overall mortality and overall cancer mortality was found

The authors fail to emphasize that in this mortality study, all cause mortality is less in each of the three exposed zones compared to the unexposed reference zone (exposed zones A 4.86%, B 4.34%, R 5.19% compared to unexposed reference zone 5.45%). The authors noted but did not emphasize that overall, "the relative risks for malignancies as a whole tended to be below 1.00." From data presented in the paper, the decreases in overall mortality and cancer mortality can be seen but their statistical significance cannot be calculated.

The mortality data collected in this study are extremely important and this cohort should continue to have extended and detailed followup with appropriate statistical analysis.

Improper statistical analysis

o The authors performed multiple hypothesis tests without adjusting the significance probability which means 5% of the hypothesis tests will be declared statistically significant when the association is actually due to chance. The authors state that they analyzed 118 causes of death, for each sex, for each of three exposure zones, for two separate five-year periods and an overall ten-year period. Not counting the overall ten-year period tests, this would amount to 1416 hypothesis tests for significance which was determined at a 5% level using 95% confidence limits. Consequently, about 70 associations (.05 X 1416) would be improperly found to be statistically significant when they were actually due to chance.

From the paper, it is not clear if all 1416 tests were able to be done, but even if only 500 were done, 25 associations would be improperly found to be statistically significant. This is an important number because for the two separate five-year periods, only 23 associations were found by the authors to be significant which is actually less than the 25 associations expected on the basis of chance alone.

The statement in the abstract that the elevated mortality from certain cancers "did not appear to result from chance" is therefore not correct; but rather, the elevated mortality from certain cancers is very likely due to chance. This statistical analysis problem can be simply fixed by adjusting the significance probability for multiple hypothesis tests, e.g. using the method of Bonferroni (Miller, R.G. Simultaneous Statistical Inference, Springer-Verlay, New York, 1981) and the data can be reanalyzed.

- Confounding factors for causes of death beyond age and sex are not included in analyses. These are likely to have an effect on estimates of mortality rates by cause.

Design and interpretation limitations

- Of all the 193 persons with chloracne from dioxin exposure, not one has died of cancer or any other cause.
  These persons are the ones with assured heavy dioxin exposure or increased sensitivity to dioxin. Any effect of dioxin would be expected to be much more probable in this group.

- For the full ten-year follow-up period, the statistical significance of cancer associations in the higher exposure zones is always based on only one cancer case.
  For the full ten-year followup period, mortality from four cancers was reported increased in either zone A or zone B (the higher exposure zones). Each one of these mortality increases was based on only one cancer case. Reliable inferences on increases in mortality rate cannot be made based on a single case. For the full ten-year followup period, there were no other increases in cancer mortality in either zone A or zone B. Some cancers had reported increases in the two five-year periods but these did not achieve significance over the total ten-year followup.

- The authors note that the exposure definition used in this study is a "poor surrogate of exposure" to dioxin. Accurate exposure classification is crucial to reliable interpretation of this type of data.

- The single death in zone A from biliary carcinoma occurred 7 months after the industrial explosion which means it is unlikely due to exposure. Also, a separate publication in 1981 listed this death as not biliary carcinoma but pancreatic adenocarcinoma which spread to the biliary tract, liver and lung (Facchetti et. al., Forensic Environ. Appl. 1981; 1:1406-44). This one biliary carcinoma is the basis for the abstract statement of association of biliary cancer with dioxin exposure.

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MORBIDITY AND MORTALITY WEEKLY REPORT

December 9, 1988 / Vol. 37 / No. 48

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International Notes

Preliminary Report: 2,3,7,8-Tetrachlorodibenzo-*p*-dioxin Exposure to Humans — Seveso, Italy

At approximately noon on Saturday, July 10, 1976, an explosion occurred during the production of 2,4,5-trichlorophenol in a factory in Meda, about 25 km north of Milan, in the Lombardia region of Italy. A cloud of toxic material was released and included 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD). Debris from this cloud fell south-southeast of the plant on an area of about 2.8 km^2 (700 acres), including parts of the towns of Seveso, Meda, Cesano Maderno, and Desio. The size of the contaminated area was estimated primarily by measuring TCDD in the soil; additional criteria included the presence of dead animals (e.g., birds, rabbits, chickens) and detection of dermal lesions among persons in the area. The contaminated area was divided into three zones (A, B, and R) depending on the concentration of TCDD in the soil (Table 1). An additional zone, Zone S, outside the contaminated area was examined as a control zone.[*] Zone A, the most heavily contaminated section, was further divided into seven subzones, A1–A7, based on increasing distance from the factory. The total amount of TCDD deposited in the contaminated area was initially estimated at about 165 g (*1*); subsequently, it has been estimated to be at least 1.3 kg (*2*).

Within 20 days of the explosion, the Italian authorities had evacuated the 211 families (735 persons) from the area later defined as Zone A and had taken immediate measures to minimize the risk of exposure to residents in nearby areas (primarily

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[*] Zone R was originally thought to be a reference zone, but on subsequent detection of TCDD concentrations in soil, Zone S was added.

TABLE 1. Distribution[*] of TCDC contamination in soil[†] — Seveso, Italy, 1976

Zone	Population	Size (acres)	Soil sampling square (m^2)	TCDD concentration (µg/m^2)	
				Mean	Highest
A	735	198	2,500	230.0	5477.0
B	4,699	665	22,500	3.0	43.9
R	31,800	3,532	22,500	0.9	9.7

[*] These data may be underestimated by approximately 25% (*2*).
[†] Measured in a soil sample, 20 cm of depth, taken at the center of a square.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES / PUBLIC HEALTH SERVICE

those in Zone B). The Italian authorities were assisted by several national and international technical commissions in assessing adverse health effects. Residents of zones A, B, and R underwent extensive medical examinations from 1976 to 1985; chloracne, detected in a small segment of the population, was the only abnormal finding (*3–6*). Only one potentially exposed person was measured for TCDD; she was a 55-year-old woman residing in a portion of Zone A (mean TCDD soil concentration of 185.4 $\mu g/m^2$), who died from pancreatic adenocarcinoma 7 months after the explosion. Her TCDD whole-weight levels varied from 6 parts per trillion (ppt) in blood to 1840 ppt in adipose tissue[†] (*7*).

In April 1988, a group of U.S. and Italian scientists convened to further examine the Seveso TCDD incident. Since more than 30,000 serum or plasma samples (volumes of 1–3 mL) had been collected from residents of the four zones from the end of July 1976 through 1985 and stored at –30 C (–22 F), the group agreed to assess whether methodology developed at CDC to measure TCDD in human serum (*8*) could be used to measure TCDD in these low-volume samples. This methodology, a lipid-based measurement highly correlated with paired measurements of TCDD in adipose tissue ($p = 0.98$) (*9*), has been used to evaluate U.S. Army veterans (*10*), U.S. Air Force Operation Ranch Hand veterans (*11*), and occupationally exposed persons (D.G. Patterson, Jr., et al., unpublished data).

The preliminary Seveso study evaluated serum samples from five Zone A residents who developed the most severe types (III or IV) of chloracne; four Zone A residents who did not develop chloracne or other health problems (in 1976, each was ≥ 15 years of age); and five persons from Zone S. All these samples had been collected in 1976 and were sent without identification to CDC for analysis. These samples were analyzed for TCDD (*8*) on both a whole-weight and a lipid basis, using triglycerides and total cholesterol data provided for those samples by the laboratory of the hospital of Desio-Milan to calculate total lipids.

The TCDD levels detected are the highest ever reported in humans (Figure 1). The three highest levels are from children who developed chloracne. Levels for the other two chloracne cases were similar to those in residents without chloracne. TCDD was not detected in four of the five controls. In one control, a level of 137 ppt TCDD on a lipid basis was detected; this value may represent either an actual level or the detection of a residue of <1% from a sample analyzed immediately before this sample.

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Editorial Note: Little is known about TCDD exposures and adverse health effects in humans. However, these Seveso samples are unique in that they were taken in proximity of time to an acute human exposure to TCDD. Thus, they and the subsequent samples allow for correlating TCDD levels and adverse health effects, if any, and for determining the half-life of TCDD in humans. This population has no apparent adverse health effects other than chloracne (*4*).

These serum measurements confirm overt exposure to TCDD in those persons tested who resided in Zone A. The levels are of the same magnitude as those found in occupational studies (*12,13*) that estimate initial TCDD levels by extrapolating to

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[†] Levels of TCDD in serum or adipose tissue of the general population are <20 ppt.

TCDD – Continued

the time of last exposure (by assuming first-order kinetics and a half-life of 7 years) (*14*). Although the three highest TCDD serum levels occurred in persons who developed chloracne, no threshold level for chloracne is obvious.

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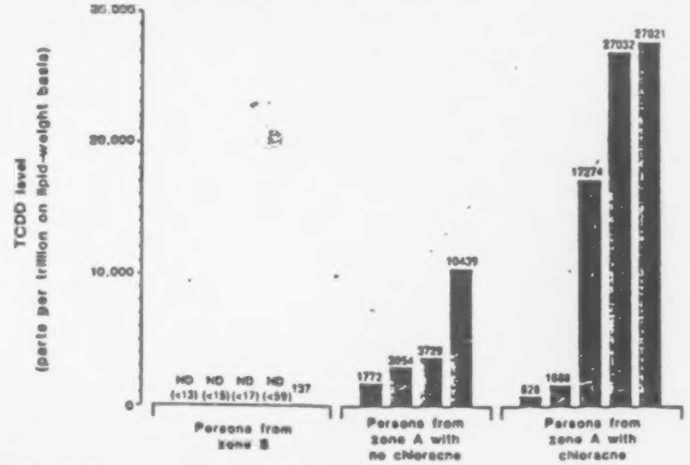
FIGURE 1. Serum TCDD levels* of Zone A residents (with and without chloracne) and Zone S controls – Seveso, Italy



*Levels of TCDD in serum or adipose tissue of the general population are <20 ppt.
ND = Nondetectable at specified levels.

TCDD — Continued

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DEPARTMENT OF THE AIR FORCE

PRESENTATION TO THE COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

SUBJECT: Air Force Health Study June 1989

In 1978, the United States Air Force, responding to Congressional and veterans' interest in the controversial issue of Agent Orange exposure and health effects, began work on an epidemiologic study of the possible health effects of exposure to herbicides and their 2,3,7,8-tetrachloridobenzo-p-dioxin (referred to as dioxin or TCDD) contaminants. Our study focused on Air Force veterans who served in the Ranch Hand defoliation operation during the Vietnam conflict.

The study was based on a scientific approach. We developed a protocol for a study including all 1267 members of the Ranch Hand unit serving from 1962 to 1971 and a group of matched comparisons. The comparison group was selected from the population of Air Force veterans who served in C-130 aircraft units stationed in Southeast Asia during the same time period. They were matched to the Ranch Hand group by age, race and job (pilot or co-pilot officer, officer navigator, non-flying officer, flying enlisted, and ground enlisted). It was assumed the comparisons were not exposed to herbicides or dioxin in Southeast Asia.

The protocol was subjected to extensive review by scientific peer groups including the University of Texas School of Public Health, the Air Force Scientific Advisory Board, the Armed Forces Epidemiologic Board, the National Academy of Science, and the Science Panel of the Agent Orange Working Group.

The protocol was approved in February 1981 and the first questionnaires were administered in October of that year. Nearly 2,300 men were given physical examinations in 1982, 1985, and 1987. Other examinations are scheduled for 1992, 1997, and 2002. To date, we have published five mortality reports and two morbidity reports. The study focuses on three primary areas: current and past illness, the death experience of the two groups, and birth defects in children fathered by the study participants. Our study is a planned 20 year research effort.

A comprehensive clinical evaluation will be performed throughout the study with examinations by internal medicine, neurology, and dermatology specialists. Psychological and laboratory testing will be included. Participation in the study has been excellent with 87 percent of the invited Ranch Hands and 76 percent of the invited comparisons taking part in the initial evaluation; 93 percent of those who participated in the initial study have returned for the follow-up examinations.

The report on the results of the 1985 examinations was released in October 1987. That report found that the health of the exposed men was generally equivalent to that of the unexposed group.

In terms of general health, Ranch Hand enlisted groundcrew rated their health as fair or poor more frequently than their enlisted comparisons; differences were not observed for the enlisted flyers or the officers. Physician examiners detected no differences for appearance of illness or distress or for the appearance of relative age. The Ranch Hands had significantly lower percent body fat. They also had a higher proportion of sedimentation rate abnormalities than the comparisons, but mean sedimentation rates were not statistically different between the two groups.

No significant differences between the Ranch Hand and the comparison groups were seen in the 1987 report for skin or systemic cancers. However, when overall lifetime basal cell carcinoma rates were adjusted for risk factors involved in the cause of such cancers (e.g., geographic area of residence, skin color, skin reaction to the sun) Ranch Hands had a statistically significant higher number of basal cell carcinomas than the comparisons. This type of skin cancer is the most common neoplasm in the white population in the United States, is not prone to distant spread, and is usually cured rapidly with simple treatment. These cancers were found in sun exposed areas of the body.

Adjusted analysis of all life-time systemic cancers revealed a significantly higher rate for Ranch Hand enlisted flyers as contrasted to comparisons. After subsequent reverification of the data, coding errors were detected. No significant group differences in life-time systemic cancer were found on analysis of the corrected data. Two cases of possible dioxin related cancer (soft-tissue sarcoma and non-Hodgkins lymphoma) in Ranch Hands were suspected at the time of the time of the 1987 report; these have since been confirmed, bringing the life-time total to two in each group.

The neurologic assessment of cranial nerve function, peripheral nerve function, and central nervous system coordination did not reveal any consistently significant group differences in the 1987 report, although abnormalities tended to aggregate in the Ranch Hands. The Babinski reflex (found adverse in the Ranch Hands at the 1982 Baseline examination) was similar in both groups at follow-up. Age, alcohol, and diabetes showed classical effects with many neurological measures.

Extensive psychological testing was conducted. In general, while statistically significant differences in some portions of the testing were seen, they were quite variable in nature and their clinical relevance is unknown. Post traumatic stress disorder was evaluated, and only 1 percent in either group had this condition. There were no group differences for current or past neuroses or psychoses. Age, educational level, and alcohol history showed strong and expected effects on the psychological measures.

Both the interval and lifetime history of liver disease were equal in both groups, as was a lifetime history of peptic ulcer disease in the 1987 report. Of the 11 laboratory tests performed to evaluate liver function, two showed significant differences in the average values in the Ranch Hand and comparison groups. However, the number of men who had abnormally high levels was not significantly different in the two groups. The uroporphyrin test, which is the best indicator of porphyria cutanea tarda, was normal in the Ranch Hands. The comparisons had significantly higher levels of uroporphyrin, but this is considered to be of no clinical relevance.

In the 1987 dermatological assessment, not one case of chloracne was diagnosed on examination, nor was historical acne anatomically distributed in a pattern that suggested past chloracne in the Ranch Hand group. Exposure index analyses and comparison with the results of the 1984 report were also unremarkable.

The 1987 cardiovascular evaluation showed that when heart disease of all types was considered, Ranch Hands were found to have significant more disease than the comparisons. However, there were no group differences for hypertension or heart attacks. Other assessments of cardiac function by blood pressure measurements and electrocardiogram did not reveal any significant group differences.

Evaluation of peripheral pulses by the more accurate Doppler technique revealed group equivalence in marked contrast to the baseline examination, which found significant pulse deficits in the Ranch Hands by manual measurement. As well, the effect of tobacco was controlled by restricting smoking for four hours prior to the measurement of the pulses. Overall, the groups were remarkably similar in cardiovascular health.

The 1987 assessment of eight hematological measures showed no significant group differences. In fact, the groups were more similar at the follow-up examination than at the baseline examination. Age, race, and smoking were significant risk factors for most hematological measures.

The groups did not differ significantly in reported kidney disease, in the 1987 report, although the baseline questionnaire noted such in the Ranch Hands. Five laboratory measures of renal function were similar between groups in the unadjusted analyses. No pattern of results suggested a detriment to either group in the adjusted analyses.

For endocrine function, TSH and testosterone means were significantly higher in the Ranch Hands, in the 1987 report, but these results were within the normal range. Impaired glucose tolerance tests revealed a significant excess in the comparison group. Examination results for past thyroid disease, thyroid and testicular abnormalities, and additional tests for cortisol level and T3 percent uptake, were similar in both groups. Age, race, occupation, percent body fat, and personality type were taken into account as pertinent variables. Overall, the endocrine health status was comparable in both groups.

Comprehensive immunological tests, composed of six cell surface marker studies and three functional stimulation studies showed no significant group differences. Age, smoking, and alcohol usage were accounted for in the analysis. The data on delayed hypersensitivity by skin testing was declared invalid and were not analyzed because of excessive reader variation and shifting diagnostic criteria. Statistical analysis was not performed.

The pulmonary assessment, in the 1987 report, consisting of past history, physical examination, and x-ray results did not indicate any consistently significant different disease patterns in the two groups. Age and lifetime smoking history were important risk factors for most pulmonary measures.

The exposure index analyses, which were stratified by occupation, revealed sporadic differences between exposure levels; however, there were no consistent dose-response relationships that supported an herbicide effect for any clinical area.

Comparisons between the 1984 study and the 1987 findings were conducted for 19 variables, and five showed significant differences in the changes of the groups. Of these five variables, one (sedimentation rate) was believed to be related to a change in laboratory methods, and the other four (Babinski reflex, depression, platelet count, and manual all pulse index) were attributed to true changes over time for the groups. In comparing all results between the examinations as well as the formal longitudinal analyses, we see a subtle, but consistent decrease in group differences over the three year period.

The process of inferring causality is complex and must be based on careful consideration of biological plausability, clinical significance, consistency and strength of the association. By direct and indirect evidence, we have concluded that this study is free of overt bias and that the measurement systems used to obtain the data were accurate and valid. We have concluded that the few positive findings are not supportive of a hypothesis of adverse health in the Ranch Hands.

In summary, the 1987 morbidity report concludes that there is insufficient evidence to support a cause and effect relationship between herbicide exposure and adverse health in the Ranch Hand group at this time. The study has revealed a number of minor medical findings that require continued surveillance. In full context, the results of this study are encouraging evidence that, at this time, the current state of health of the Ranch Hand participants appears unrelated to herbicide exposure in Southeast Asia. However, due to possible latent effects, we cannot exonerate the herbicide at this time.

Data from the 1987 examinations are currently being analyzed and a report will be released in early 1990.

In addition to the morbidity analyses, periodic evaluations of the death (mortality) experience of the Ranch Hand and comparison groups have been conducted and reported. Analyses have been directed at total and cause-specific death rates with adjustment for year of birth, race, military rank, and occupation. The latest analysis includes the death experience of approximately 20,000 men (all of the Ranch Hands and all men assigned to C-130 aircraft units in Southeast Asia between 1962 and 1971). The reports have repeatedly demonstrated similar death experience in the two groups, with no apparent effect from Herbicide Orange exposure.

The overall indirectly standardized Ranch Hand mortality rate is 2.6 deaths per 1000 person-years and the corresponding rates for the matched comparisons and the entire comparison population are 3.0 and 2.6 deaths per 1000 person-years respectively. The overall adjusted relative risks assessing Ranch Hand mortality with all comparisons is estimated at 1.0.

This evaluation also differs from previous statistical contrasts of Ranch Hand and comparison mortality in that the mortality experience of the entire comparison population has been used as the standard for assessing Ranch Hand mortality.

Digestive system deaths are significantly more frequent in Ranch Hands relative to the comparison population. However, five of the six Ranch Hand digestive system deaths were attributable to alcohol consumption and, therefore, this finding is considered unrelated to herbicide exposure.

A statistically significant increasing trend in post-1983 death rates among Ranch Hand flying officers was noted in this latest mortality analysis, which appeared due to malignant neoplasm deaths in Ranch Hand flying officers. In previous reports, this group of officers had lower mortality than their comparisons, though this difference was not significant. Current studies suggest that flying officers were among the least exposed of all Ranch Hand personnel. Ranch Hand malignant neoplasm deaths in the flying officers are not restricted to a particular anatomic site or cancer type as would be expected if Herbicide Orange and its dioxin contaminant were exerting a direct effect on malignant disease.

In conclusion, the overall cumulative mortality of the Ranch Hands remains statistically indistinguishable from that of both their matched comparisons and the entire comparison population. Ranch Hands are similar to all comparisons in cumulative accidental, malignant neoplasm, and circulatory system mortality. Additional mortality reports will be prepared over the next 12 years.

There has been much controversy concerning the relationship between herbicide exposure and birth defects in children. Initial evaluation of fertility and reproductive systems found that there was significant disparity between groups for reported birth defects. We incorrectly concluded that group differences were confined to minor skin conditions. The baseline findings of overall group differences in reported birth defects is being reinvestigated with full medical record verification of the birth defects reported on all children fathered by study participants. Verification of the health status of the 6,723 children fathered by study participants was completed in late 1988, and medical records were obtained for all but 89 (1.3 percent) of the children. The rate of missing records is exceptionally low and will strengthen the statistical analysis of the data. The verified birth defect report should be ready to submit to the Advisory Committee by early next year.

Exposure Index

The initial study protocol developed an estimated exposure index that reflects the best calculation of the effective number of gallons of herbicide to which the airmen were exposed. It is based on an estimate of gallons of herbicide sprayed per month (1962-1971), the levels of dioxin contamination, and the number of men assigned each month.

Individual exposure measurements could not be made. While the method used to establish the exposure index was state-of-theart, variation due to individual work habits and circumstances could not be modeled.

In mid 1986, strong evidence was demonstrated by the Centers for Disease Control (CDC) and other institutions that dioxin levels could be measured in blood as well as fat tissue. The CDC demonstrated that blood levels and fat tissue appear to be equivalent. The Air Force concluded a collaborative study with the CDC to validate the study and estimate the half life of dioxin in humans. Initial calculations indicate that the dioxin half-life in humans is approximately 7 years. This pilot study of 2 serum samples from each of 36 study participants confirms that dioxin half life is approximately 7.1 years. The range of dioxin exposure in the Ranch Hand group (0-313 parts per trillion) is significantly higher than the control group (0-26.6 parts per trillion). A part per trillion is equivalent to one second in 32,000 years.

Serum has been collected and stored from 1,199 study participants. To date, assay results on 898 of these have been received from the CDC, and the remaining specimens should be completed by the end of January 1990. The results demonstrate that the ground enlisted personnel have the highest levels of dioxin in their blood with the officers having the least. This assay will provide a direct measure of Herbicide Orange exposure for study participants and will reduce the need to make assumptions about the level of individual exposure. This will be a significant improvement in the scientific accuracy and value of the study.

Comments on Proposed Legislation

Proposed legislation, S. 1153, presumes a link between herbicide exposure and certain diseases. To date, our study results have not indicated that there is a causal link between adverse health and exposure to Herbicide Orange or its dioxin contaminant; however scientific uncertainty remains in some areas. Evidence from our serum studies and those of the CDC, New Jersey, and Massachusetts indicate that only veterans who served in the Ranch Hand or Army Chemical Corps units were exposed to dioxin above normal background levels.

Section 11 of S. 1153 is the only section of the bill with direct application to the Air Force. We are complying with the requirement for an annual report of our progress. This has been mandated by Public Law 100-687, which directs the Department of Defense to submit a schedule of reports on the progress and findings of the Ranch Hand Study. A brief update on the Study's progress was provided to the House and Senate Armed Services and Veterans' Affairs Committees recently. This will be an annual report.

The requirement in S. 1153 for direct consultation between the Advisory Committee and the Air Force scientists conducting the research is appreciated, although such direct contact has occurred since the Advisory Committee was first formed.

The Department of Health and Human Services (HHS) is in the process of forming a new Advisory Committee to provide scientific oversight to the Air Force investigators. HHS has asked veterans and service groups for nominations and will select new members and a new chairman soon.

I appreciate the opportunity to provide the committee with an update on the Air Force Health Study.

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

JUL 1 4 1989

Honorable Alan Cranston
Chairman, Committee on
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Dear Mr. Chairman:

I am pleased to furnish the views of the Department of Veterans Affairs (VA) on S. 1243, 101st Congress, a bill "to establish a retirement and survivor benefit program for judges of the new United States Court of Veterans Appeals, and for other purposes." Subject to the qualifications below, we favor enactment of the proposal.

Title I of the bill provides for the disability and retirement of judges of the Court of Veterans Appeals (CVA), and would establish a retirement and survivors annuity program. It also contains conforming amendments regarding the Civil Service Retirement System, Federal Employees Retirement System, and standards for removal of judges. Enactment of title I would not affect the administration of veterans' benefits programs nor judicial review of VA actions before the Court, and we will therefore not comment.

Title II of the bill pertains to the establishment and operation of the CVA. Section 201 would require transfer of up to $3.1 million from several VA revolving funds to the CVA to pay for the start-up costs and operation of the Court until resources for the Court are properly appropriated by Congress.

On June 30, 1989, the President signed into law Public Law 101-45, 103 Stat. 97, which among other things provides $3.1 million in supplemental appropriations for the initial expenses of the Court. The perceived need addressed in section 201 is now moot.

Section 202 of the bill would, subject to certain conditions, direct the Administrator of the General Services Administration (GSA) to acquire space for the CVA in the Post Office Building adjacent to Union Station in the District of Columbia. Because this provision pertains to matters outside the responsibilities of VA, however, we defer comment on Section 202 to other agencies directly concerned.

Section 203 would extend the statutory deadline for filing a notice of appeal in the CVA under new section 4066 of title 38, United States Code. It would provide that an appellant may timely file a notice of appeal in the court up to 30 days after the date on which the CVA publishes a notice in the Federal Register announcing the commencement of its operation. We endorse this proposal as a means of assuring that no person is prejudiced by the possibility of the Court's commencing operations more than 120 days after the date of a decision of the Board of Veterans Appeals which would otherwise be eligible for judicial review. Since any BVA decision following a November 18, 1988, or later notice of disagreement is eligible for review in the CVA, and a number of such decisions have been issued, it is at least theoretically possible that a person's appellate rights might lapse by expiration of the 120-day period before the Court begins accepting appeals. Thus, the amendment proposed in section 203 would preserve the appellate rights of persons while the Court is in a state of genesis.

Section 204 of the bill would apply the Federal Rules of Appellate Procedure (FRAP) to the CVA until the Court adopts its own rules of practice and procedure. The FRAP are a comprehensive system of rules of general applicability in the Federal Courts of Appeals. They are accessible and functional, and are the product of many years of experience of the bench and bar. Adoption of these rules in the interim, while the Court assesses its needs and gains experience with veterans' cases, would ease the initial administrative burden on the CVA. Consequently, we do not object to enactment of section 204. Moreover, we understand that Chief Judge Nebeker has indicated his desire for such interim legislation.

Section 205 would authorize the CVA or, in particular, the Chief Judge to make up to 35 initial employee appointments without regard to the competitive-service strictures of title 5, United States Code. Such employees would later be permitted to convert to competitive-service status upon proper application and approval by the Director of the Office of Personnel Management (OPM).

Public Law 101-45 contains authority for the appointment, during fiscal year 1989, of up to 35 Court employees without regard to the provisions of title 5. Thus, section 205 of the bill has been essentially obviated, and we recommend its deletion.

Title III of the bill would make several technical corrections to the Veterans' Judicial Review Act (the Act), division A of Public Law 100-687. Section 301 would amend section 401(d) of the Act to specify that statutory provisions governing reopened claims before the BVA will take effect on September 1, 1989. We support this proposal, as it harmonizes the reopened-claim provision applicable to the BVA with similar provisions applicable to agencies of original jurisdiction under section 103 of the Act.

Section 302, in several subsections, would first amend section 3301(b)(1) of title 38 to authorize the Administrator (Secretary) to disclose pertinent files and other information to independent medical experts. We support this provision as it is necessary to facilitate the implementation of new section 3009 of title 38. It also conforms the statute to similar provisions applicable to the BVA.

Section 302 would also modify the jurisdiction of the United States Court of Appeals for the Federal Circuit in reviewing the decisions of the CVA. It would eliminate a provision delegating authority to the appeals court to overturn statutes found to be arbitrary, capricious, or an abuse of discretion. Unless this amendment is made, the Court of Appeals would ostensibly have the power to invalidate statutes with which it disagrees on nonconstitutional grounds, thereby enabling the Court to "legislate." We believe the scope of new section 4092(d)(1) of title 38 currently raises serious constitutional questions, and thus favor the amendment of this statute.

In addition, section 302 would redesignate section 223 of title 38, as enacted by the Veterans' Benefits and Services Act of 1988, Public Law 100-322, as section 224. We favor this amendment as it would alleviate the redundant numbering of two sections of title 38, section 223 as added by Public Law 100-322 and section 223 as added by Public Law 100-687.

Title IV of the bill would amend miscellaneous provisions of law pertaining to the operation of VA and the CVA. Section 401 would exempt two categories of appointees, non-career Senior Executive Service employees and certain persons in confidential or policymaking positions, from the prohibition against consideration of political affiliation and activity. We endorse this provision as an important clarification of the law governing the appointment process.

Section 402 would provide for the appointment of an acting chief judge of the CVA in the event of a vacancy. We have no objection to this provision, as it simply provides a method of succession on the Court. We note, however, that the amendment does not specify whether an acting chief judge would be entitled to the salary and the concomitant retirement benefits of a chief judge.

Section 403 would grant the CVA authority to hire experts and consultants under section 3109 of title 5, U.S. Code. Inasmuch as Public Law 101-45 authorizes the Court or, in certain instances, the Chief Judge to procure the services of experts and consultants, this section of the bill is unnecessary.

Finally, we would like to bring to the Committee's attention an ambiguity in the Act that should be addressed prior to the commencement of appeals to the CVA. Under section 211(a)(2) of title 38, section 101 of the Act, sovereign immunity is waived as to matters covered by sections 775 and 784 of title 38, that is, VA insurance matters. Historically, such insurance cases have been subject to judicial review in the U.S. District Courts following a final BVA decision.

Under section 4052(a) of title 38 as enacted by section 301 of the Act, however, the CVA now has exclusive jurisdiction to review decisions of the BVA, including insurance decisions. In our view, it is not clear in the Act nor its legislative history whether section 4052(a) is intended to supersede sections 775 and 784 of title 38, thereby implicitly divesting the U.S. District Courts of jurisdiction in all VA insurance cases appealed from the BVA, or whether the CVA and U.S. District Courts are to have concurrent jurisdiction in such cases, or whether the CVA is intended to have jurisdiction over appeals from BVA decisions except for insurance cases.

To rectify this ambiguity, we request that the following proposed amendment be incorporated into S. 1243: "Section 4052 is amended by striking out the first sentence of subsection (a) and inserting in lieu thereof 'the Court of Veterans Appeals shall have exclusive jurisdiction to review final decisions of the Board of Veterans' Appeals, except for matters arising under sections 775 and 784 of this title, which shall be brought against the United States only in the United States District Courts.'"

Enactment of S. 1243 would not entail significant benefit or administrative costs for the Department of Veterans Affairs.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 1243 to the Congress.

Sincerely yours,

Edward J. Derwinski
Secretary

DAV

Motto: "If I cannot speak good of my comrade, I will not speak ill of him."

DISABLED AMERICAN VETERANS

NATIONAL SERVICE and LEGISLATIVE HEADQUARTERS
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June 29, 1989

Honorable Alan Cranston
Chairman
Senate Veterans Affairs Committee
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Dear Chairman Cranston:

Thank you for your letter of June 22, 1989, requesting the comments of the Disabled American Veterans (DAV) on the Court of Veterans Appeals Judges Retirement Act, which you introduced as S. 1243 and which Chairman Montgomery introduced as H.R. 2727. We have only one comment, as follows.

Section 204 of S. 1243 mandates that the rules of the U.S. Court of Veterans Appeals (COVA) shall be the Federal Rules of Appellate Procedure (FRAP) until COVA adopts its own rules pursuant to 38 U.S.C. Section 4064(a), as added by the Veterans Judicial Review Act, Public Law 100-687 (Nov. 18, 1988) (Review Act). DAV believes that enactment of such a mandate could not only unduly restrict COVA's discretion, but also could adversely affect representation before the new court by veterans' service organizations (VSOs). Accordingly, we urge that you substitute for current Section 204 a provision that would permit COVA to adopt, on an interim basis, such rules of practice and procedure as it deems appropriate, without the necessity of complying with the notice-and-comment procedures required by 28 U.S.C. Section 2071(b), as added by the Judicial Improvements and Access to Justice Act, Public Law 100-702 (Nov. 19, 1988) (Improvements Act).

As you know, Mr. Chairman, the Review Act grants COVA rule-making powers independent of those granted to the Article III courts under the Rules Enabling Acts, see 38 U.S.C. Section 4064(a), and thus free of the requirement to conform to FRAP except as COVA may elect to do so. This is fully consistent with the flexible Article I character of COVA that will enable it, as Chairman Montgomery stated upon House passage of the Review Act, to preserve "as much of the informal and generous nature of the existing [adjudicatory] system as possible." To this end, for example, the Review Act expressly authorizes COVA to permit persons other than members of the bar to be admitted to practice before it. See 38 U.S.C. Section 4063(b).

To take advantage of this rule-making flexibility of COVA, more than a dozen informal meetings of VSO representatives, American Bar Association members and any other interested persons have been held since the confirmation hearing of Chief Judge-designate Nebeker on May 15, 1989, and with his occasional attendance, to consider means by which the FRAP might be adapted for COVA operations and still serve the purposes of the Review Act. To single out one example of particular concern to DAV, among the many issues addressed at these meetings has been the implementation of 38 U.S.C. Section 4063(b), cited above, authorizing nonlawyers to practice before COVA. Under the proposed mandate of Section 204 of S. 1243, COVA would be required to abide by FRAP, including FRAP 46 that authorizes only attorneys to practice before the U.S. Courts of Appeals.

DAV believes that COVA should be free to adopt interim rules of procedure before it commences operation that would provide for the unique characteristics of COVA operations intended by the Review Act, including accommodation of nonlawyer service representatives. The application of FRAP alone would not, as illustrated by FRAP 46, be sufficient. Nor would it even be sufficient simply to authorize adoption of FRAP along with such amendments to FRAP as COVA may deem necessary on an interim basis, for the Improvements Act makes clear that the requirement of new 28 U.S.C. Section 2071(b) (that court rules may be prescribed "only after giving appropriate public notice and an opportunity for comment") applies to Article I courts like COVA as well as the Article III courts to which Section 2071 ordinarily applies.

Title IV of the Improvements Act, which contains new Section 2071(b), corresponds to Title I of the House bill, with respect to which the House Judiciary Committee Report (no Senate Report was submitted) observed that the Committee's Report on the prior Congress' bill (H.R. Rep. No. 422, 99th Cong., 1st Sess. (1985) (1985 Report)) applies. 1988 U.S. Code Cong. & Ad. News 5986. The 1985 Report states that the procedural requirement of "notice and opportunity to comment" applies to "any federal court," including "the Tax Court and the Court of International Trade." 1985 Report at 18-19. Since the latter courts are both Article I courts, and the Improvements Act was signed into law after the Review Act, it follows that the notice-and-comment requirement applies to such rules as COVA may prescribe.

Thus, in order to preserve COVA's existing discretionary authority to prescribe its own rules, including rules that would allow the new court to open its doors on a basis hospitable to nonlawyer service representatives and lawyers alike, but recognizing that time is too short for COVA to provide appropriate notice-and-comment opportunity on such rules if the target date for commencing COVA operations is September 1, 1989, DAV suggests that Section 204 of S. 1243 authorize COVA to adopt such interim rules as it deems appropriate without regard to the notice-and-comment requirement of 28 U.S.C. Section 2071(b). Thereafter, COVA could develop permanent rules in full compliance with Section 2071(b).

We believe that DAV's foregoing suggestion is in keeping with the unique character of the new court and the spirit with which the compromise underlying the Review Act was achieved. The suggestion promotes efficiency and flexibility for COVA in much the same way as the supplemental appropriation bill for FY 1989 would in authorizing COVA to disregard the competitive service requirements of Title 5, U.S. Code, with respect to initial appointments of COVA personnel. DAV hopes you will agree with its suggestion and would be happy to discuss it further if you wish.

Sincerely,

JOHN F. HEILMAN
National Legislative Director

JFH:am

cc: Sen. Murkowski
Cong. Montgomery
Cong. Stump

DAV

Motto: "If I cannot speak good of my comrade, I will not speak ill of him."

DISABLED AMERICAN VETERANS

NATIONAL SERVICE and LEGISLATIVE HEADQUARTERS
807 MAINE AVENUE, S.W.
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July 6, 1989

Honorable Alan Cranston
Chairman
Senate Committee on Veteran Affairs
414 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Cranston:

In response to your letter of June 23, 1989, attached, for the record, is the testimony (20 copies) of the Disabled American Veterans on 13 separate bills which have not been subject to Committee hearings in the First Session of the 101st Congress, but which may be acted upon by the Committee during July 1989 mark-up consideration.

You will note that the DAV's views on S. 1243, which were previously conveyed to you in accordance with your request by letter of June 22, 1989, are also provided as an addendum to the enclosed testimony.

Sincerely,

JOHN F. HEILMAN
National Legislative Director

JFH:lms
attachments
enclosure

STATEMENT OF
JOHN F. HEILMAN
NATIONAL LEGISLATIVE DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS AFFAIRS
U.S. SENATE
July 6, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

On behalf of the over 1.3 million members of the Disabled American Veterans and its Ladies' Auxiliary, I am pleased to present the views of our organization on the following legislation which has not been the subject of prior hearings in this First Session of the 101st Congress, but which may be acted upon by the Committee during future mark-up consideration.

S. 505

This measure, introduced by Senator Stevens, through appropriate amendment of Section 103(d), Title 38, USC, proposes to authorize that remarriage after age 55 years of a surviving spouse shall not be a bar to receipt of Dependency and Indemnity Compensation (DIC) benefits payable under Section 411, Title 38, USC.

Mr. Chairman, as the delegates to the most recent National Convention of our organization have not approved a resolution on the above cited change of law, the DAV has no official position -- pro or con -- on S. 505.

S. 613

This measure, introduced by yourself, Mr. Chairman, at the request of the Administration, proposes, through appropriate amendment of Title 38, USC, to automatically index future cost-of-living adjustments (COLAs) in the VA's service-connected disability and death (DIC) compensation programs to annual percentage changes that occur in the Consumer Price Index (CPI), as measured and reported by the Bureau of Labor Statistics.

Mr. Chairman, with respect to the automatic indexing of future adjustments of VA service-connected disability and death compensation benefits, the DAV is adamantly opposed to such indexing, for we regard it as nothing more that a thinly veiled attempt on the part of the Office of Management and Budget (OMB) to inhibit Congressional oversight of the VA's disability and death compensation programs.

As far as the DAV is concerned, decisions to adjust service-connected disability and death compensation benefits should remain firmly in the hands of the Veterans Affairs Committees and the Congress. Not only is the Congress, lead by the Veterans Affairs Committees, eminently qualified to determine what, if any, adjustments should be made in these benefits levels, but the annual oversight and scrutiny that accompany such considerations have, over the years, resulted in meaningful program improvements that otherwise would not have been forthcoming.

Mr. Chairman, we do not want the programs of compensation and DIC to be placed on the "back shelf," for that is what would occur under the Administration's proposal. We are aware that you and members of this Committee are of the same opinion and we deeply appreciate your desire to continue your firm and unfettered guardianship of the entitlements of our nation's service-connected disabled veterans, their dependents and survivors. We therefore urge the Committee to take no favorable action on S. 613.

S. 860

The DAV is generally supportive of S. 860, introduced by Senator Daschle, which proposes to amend Section 203, Title 38, USC, "to ensure adequate analysis of the budgetary needs of the

Department of Veterans Affairs for veterans health care programs."

If enacted, the Secretary would be required to:

- provide an assessment -- of each appropriation request submitted to the President by the Secretary -- of whether the amount requested is sufficient to fully meet veterans' anticipated demand for health care;
- if the amount is not sufficient, provide a statement specifying the amount needed to fund that level of care and a detailed discussion of the adverse effects for veterans' health care that will result from funding such care in the amount requested by the President;
- provide an assessment -- at the same time the President submits the Department's budget to Congress for a fiscal year -- to the Veterans Affairs Committees of whether the amount specified for veterans' health care is sufficient to fully meet veterans' anticipated demand for health care in that fiscal year; and
- if the amount is not sufficient, provide a statement specifying the amount needed to fund that level of care and a detailed discussion of the adverse effects for veterans health care that will result from funding such care in the amount requested.

Additionally, the Comptroller General would be required to submit to the Veterans Affairs Committees -- within 30 days of receiving the Secretary's report -- his assessment of the accuracy of the report, as well as any other comments considered appropriate.

The DAV is supportive of the perceived intent of this measure -- to ensure, to the greatest extent possible, that sufficient funds are requested for the veterans' health care system based upon the actual needs of disabled veterans to receive such care.

We are of the opinion that a need exists for revision of the entire VA budget formulation methodology. In that context, we continue to advocate such an approach as setforth in our testimony before the Senate Veterans Committee on June 14, 1989 regarding Section 204 of S. 13.

S. 1145

Introduced by Senator Matsunaga, S. 1145 proposes to reestablish the Advisory Committee on Native American Veterans effective October 1, 1989 and terminating on September 30, 1991.

The Advisory Committee on Native American Veterans was first established in 1986 -- Section 19032, Public Law 99-272, the "Veterans Health Care Amendments of 1986" -- and officially completed its duties on February 1, 1989 with the submission of its third and final report.

This measure would direct the Committee to examine and evaluate programs and other activities of the VA with respect to the needs of veterans who are Native Americans, including American Indians and Alaska Natives to include:

- An assessment of the needs of such veterans with respect to health care, rehabilitation, readjustment counseling, outreach services and other benefits and services administered by the Department; and

- a review of the manner and the extent to which programs and other activities of the Department meet such needs.

As proposed, the Committee would consist of the following members:

- Secretary of Labor;
- The Chief Medical Director and the Chief Benefits Director; and
- four members from the general public including one Native Hawaiian, one Alaska Native, and one Native American residing in or near the District of Columbia.

Also, it is stipulated that there shall be representatives of veterans who have service-connected disabilities and individuals who are recognized authorities in fields pertinent to the needs of Native American veterans.

We are somewhat concerned regarding the Committee membership. Although clearly stated that the "Committee shall consists of six members," the bill language appears contradictory by identifying seven individuals that are to be included. Also, we question if the stipulated number of Committee members -- six or seven -- is truly sufficient to encompass the range of expertise contemplated and necessary in addressing the broad range of issues to be considered.

Notwithstanding the above noted concern, the DAV would not object to the favorable passage of S. 1145.

S. 1195

Introduced by yourself, Mr. Chairman, at the request of the Department, S. 1195 proposes an amendment to Section 203(b), Title 38, USC, to delete the requirement that settlement of claims in excess of $1 million on a construction contract be provided for specifically in an appropriation law. In lieu thereof, this measure would provide that the Secretary shall promptly notify the House and Senate Committees on Appropriation of the settlement of claims of such nature.

The DAV has no official position regarding this measure.

S. 1211

Introduced by yourself, Mr. Chairman, S. 1211 proposes to require the Secretary, effective April 1, 1990, to pay the maximum amount of special pay -- a total of $22,500 for both primary and incentive special pay -- to VA physicians and dentists.

It is widely acknowledged that there exists an acute shortage of health care personnel within the VA and the medical profession at large. In our view, the Congress has acknowledged this fact and acted in innovative ways to help alleviate the situation. S. 1211 represents, in our view, a meaningful response to an identified need regarding the recruitment and retention of VA physicians and dentists, as well as an enhancement to employment within the VA. For these reasons we are supportive of this measure.

Draft Legislation

Our views have also been requested on draft legislation that you plan to introduce, Mr. Chairman, that would extend, expand and improve the VA's preventative health care program as authorized by Section 663, Title 38, USC.

Major provisions of the draft legislation propose:

- to extend, until September 30, 1994 the requirement for the conduct of preventive health care services;
- to expand the categories of veterans to whom VA is required to furnish such services;
- to require that veterans be offered a minimum of two preventive health care services annually;
- to require that each VA health care facility implement a major preventive health care and health promotion incentive;
- to authorize the VA to furnish preventive health care services to all other veterans otherwise receiving care or treatment except for those who are required to make co-payments for their care, category C veterans;
- to require the Secretary to submit reports on the experience of this program;
- to limit expenditures for this program for Fiscal Years 1990 through 1994;
- to require the designation of an individual in the Veterans Health Services and Research Administration as the director of preventive health care and health promotion programs; and
- to provide for certain, specific services to be included in this program.

The DAV is supportive of the concept and provisions contemplated by the proposed legislation. We would, however, offer one suggestion.

As we understand current law, as well as what is proposed in the draft bill, the provision of preventive health care services to veterans may only be furnished to those veterans already being furnished some type of medical services by the VA.

At a time when the medical profession is seeking innovative ways to provide medical services and, in fact, changing the ways that care is delivered, we are concerned that the proposed language of this bill has the potential to be restrictively interpreted with the end result that certain veterans who may ultimately benefit from receiving preventive health care services may not receive them.

Specifically, we would refer to Section 113 of P.L. 100-322 which grants authority to the VA to conduct a program of mobile health care clinics. As we envision the conduct of that program, many veterans may be seen by such mobile clinics who have not previously been furnished medical services by the VA. In that instance, it is conceivable that by virtue of the veteran not already receiving medical services from the VA, such veteran could be denied beneficial preventive health care services.

Therefore, we believe that bill language or, at the least, report language should clarify this situation. Simply stated, we feel the VA should have the express authority, if necessary, to provide preventive health care services to veterans in a mobile health care clinic when indicated, notwithstanding the fact that the veteran may not currently be receiving any other form of health care from the VA.

S. 1110

Mr. Chairman, this measure, introduced by yourself, at the request of the Secretary of Veterans Affairs, proposes to amend Title 38, USC, to authorize the Department of Veterans Affairs to require mandatory disclosure of Social Security numbers in claims for disability and death benefits.

If enacted, H.R. 1110 would require an individual who applies or is in receipt of any compensation or pension benefits under Title 38, USC, as a condition to receipt or continued receipt of compensation or pension benefits, to provide the VA with their Social Security number and that of any dependent or beneficiary for whom they receive benefits.

Mr. Chairman, as you know, current law (P.L. 93-579 Section 7(a)) prohibits any federal, state or local government agency from denying to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his or her Social Security number. There are exceptions to the aforementioned prohibition, however, in all instances where a Social Security number is requested individuals must be informed whether the disclosure is mandatory or voluntary and for what purpose the Social Security number will be used.

Mr. Chairman, in reviewing the legislative history of the "Privacy Act of 1974" (P.L. 93-576) we note that Congress was extremely concerned about any unwanted intrusion into an individual's privacy, especially with regard to the exchange of information about individuals based on the use of their Social Security numbers. Concerns about our government becoming a "Big Brother" as described in George Orwell's famous book 1984, was clearly on the minds of the members involved in crafting the Privacy Act.

The legislative history of Public Law 93-579 is replete with references about Congressional concerns that an individual's right not be infringed upon by government bureaucracy. The right of privacy regarding one's Social Security number is maintained under the Privacy Act, except where there is a legitimate government need for such information. In those cases where the government demonstrates a need for a Social Security number, the individual must be informed as to what uses will be made of their Social Security number.

Mr. Chairman, as you know, VA currently has the authority to require an individual claimant to disclose his or her Social Security number and that of their dependents in those cases where outside income affects the receipt of VA benefits. We view this use of Social Security numbers as legitimate, however, we must object to requiring all VA beneficiaries to furnish VA with their Social Security number.

As previously mentioned, H.R. 1110 proposes to permit the VA to require all current and future VA compensation recipients to furnish VA with a Social Security number under threat of denial or discontinuance of compensation benefits should they decline to furnish the VA with this information. Clearly, VA does not need Social Security numbers on current non-means tested beneficiaries, such as compensation recipients, when not absolutely necessary to the development of a compensation claim.

Mr. Chairman, DAV has no objection to VA's stated purpose for requesting this legislation "...monitoring {non-means tested programs} to protect against fraud and abuse." However, Mr. Chairman, we see no need for requiring -- as a condition for the receipt or continued receipt of compensation -- individuals to furnish not only their Social Security number but also those of their dependents.

Mr. Chairman, we believe the restrictions in current law regarding the use of Social Security numbers are proper and in

S. 1146

Mr. Chairman, this measure, introduced by Senator Matsunaga, in general, proposes to require the Secretary of Veterans Affairs, during Fiscal Years 1990, 1991, and 1992 to:

1. Determine the feasibility of making direct housing loans to eligible veterans for the purchase of housing on Native American trust lands; and

2. Determine ways to improve the access of Native American veterans to housing loan benefits under Chapter 37, Title 38, USC.

Under a pilot program, Native Americans, who are otherwise eligible for VA home loan guaranty benefits, will receive direct loans from the VA in connection with the purchase of housing located on Native American trust lands.

The VA Secretary is also required to provide the Committees on Veterans Affairs of the Senate and House of Representatives with a report regarding the VA's views relative to the feasibility of conducting:

1. A permanent program to make direct housing loans to eligible persons for the purchase of housing on Native American trust lands;

2. A direct housing loan program providing for the Secretary to make housing loans jointly with tribal organizations and economic enterprises to eligible persons for the purchase of housing on Native American trust land and to pay the Federal Government share of such loans out of sums in the Loan Guaranty Revolving Fund;

3. a housing loan guaranty program providing a guarantee for housing loans made to eligible persons by tribal

keeping with the wishes of the American public to be protected against a "Big Brother" society. We therefore oppose the passage of H.R. 1110.

Mr. Chairman, we also must express our concern about what we believe to be ulterior motives behind the request for information about service-connected disabled veterans and their dependents.

Over the past several years DAV has become increasingly alarmed at what we believe to be a back door approach to means-testing VA compensation programs. It is readily apparent to us that past audits, such as the I.G. Audit to match federal employment records of certain service-connected disabled veterans with mental disorders, are nothing more than a precursor to means-testing compensation benefits.

Mr. Chairman, the DAV believes, as we know you do, that service-connected disabled veterans should be compensated based upon the severity of a service incurred disability and not on any outside income that their dependents may have. Similarly service-connected veterans should not be punished for their attempts to overcome their disabilities suffered as a result of their service in defense of our nation.

In conclusion, Mr. Chairman, we must again express our opposition to H.R. 1110 as we believe it to be unnecessary. While DAV acknowledges the VA's duty to protect the integrity of the VA compensation and pension programs, we do not believe a requirement that all current and future VA compensation beneficiaries furnish VA with Social Security numbers is necessary to protect the integrity of the compensation program.

organizations and other Native American organizations for the purchase of housing on Native American trust lands; and

4. the Secretary's recommendations, if any, for legislation regarding such programs.

Mr. Chairman, while the DAV has no National Convention mandate relative to the provision of H.R. 1146, we certainly support Senator Matsunaga's efforts to assist Native American veterans in utilizing their VA home loan guaranty benefits.

Mr. Chairman, a quote from a member of the Veterans Administration's Advisory Committee on Native American Veterans, himself a Native American, contained in that Committee February 1, 1989 report, we believe deserves repeating here "...If you want Indians to participate...you have to go where they are. You take them by the hand and show them the way. THERE IS NO OTHER WAY. You don't sit back and wait - you go out and help. And that takes effort."

Mr. Chairman, in recognition of the unique and un-met needs of Native American veterans and in realization of their reluctance to seek the assistance of persons outside tribal lands, DAV established a Native American veterans outreach program several year ago. This program is designed to reach out to Native American veterans to make them aware of the VA benefits and service they earned as a result of their service in our nation's Armed Forces and to assist them in obtaining these valuable benefits.

Mr. Chairman, DAV National Service Officers stationed in those areas of the United States where tribal lands are located, report that outreach efforts are absolutely necessary if Native American veterans are to fully utilize their VA benefits. For the most part, Native American veterans who reside on tribal lands do not seek out the assistance of individuals outside the reservation. Therefore, based on the experience of our National Service Officers and the report of the VA Advisory Committee on Native American veterans, we strongly urge that any pilot program designed to assist Native American veterans also contain language to provide that outreach efforts be undertaken to assure that Native American veterans are made aware of their potential eligibility to such programs.

Mr. Chairman, the DAV has no objection the favorable consideration of S. 1146 and we wish to again commend Senator Matsunaga for his effort on behalf of Native American veterans.

S. 1147

This bill, Mr. Chairman, introduced by yourself would amend Title 38, USC, to extend authorization for a headstone allowance in instances where a veteran pre-purchased a grave-marker prior to his death.

Under current law the Department of Veterans Affairs may provide a headstone allowance only to the person entitled to request such a headstone, and only if they incurred the costs of a pre-purchased headstone. In cases where a veteran pre-purchased his own headstone prior to death the law precludes reimbursement of a headstone allowance to his eligible survivors.

S. 1147 would rectify this inequity, and authorize payment of a headstone allowance to a veteran's eligible survivors in instances where a veteran pre-purchased his own headstone, and DAV is pleased to extend our support to this bill.

Draft Legislation Relating to the Arizona Veterans Memorial Cemetery

This draft bill, Mr. Chairman, introduced by Senator DeConcini, would provide for certain administrative authority and requirements relating to the operation of the Arizona Veterans Memorial Cemetery, following transfer of the cemetery to the Department of Veterans Affairs as provided for in the Veterans Benefits and Services Act of 1988 (Public Law 100-322).

The DAV supports the provisions contained in the draft legislation provided to us for comment.

S. 1141

This bill, Mr. Chairman, introduced by Senator Graham, and cosponsored by yourself and Senator Murkowski, would direct the Secretary of the Army to set aside an appropriate area within Arlington National Cemetery for the unmarked burial of cremated remains. As we understand this measure, an area not suitable for the burial of casketed remains would be set aside for the interment of the ashes of persons eligible for interment in Arlington National Cemetery.

Mr. Chairman, this proposal has not been widely publicized and, perhaps, in part for that reason, the membership of DAV has not adopted a resolution or otherwise expressed a mandate for S. 1141. As you know, our membership's desires, expressed in resolution format, forms the core of our legislative program. Since we have no mandate regarding S. 1141, the DAV respectfully declines to take a position on this bill.

However, we would like to offer some comments and express some concerns about the provisions of S. 1141.

Arlington National Cemetery, first established some 120 years ago and administered by the Department of Army, is one of our nation's most sacred shrines. More than 200,000 of our nation's veterans and their dependents are interred at Arlington on 612 acres of land that represents an embodiment of the sacrifices made by America's veterans to uphold our country's ideals and freedom.

In April 1980, Arlington National Cemetery's Columbarium for cremated remains was opened for use, designed to be the final resting place for the cremated remains of some 50,000 of our nation's veterans and their dependents.

Arlington National Cemetery averages 15 funerals per day and information available to us projects the Cemetery will reach its capacity for casketed burials in the year 2020, and the interment of cremated remains at the Columbarium in the year 2029.

It seems, therefore, important that Congress undertake some futuristic planning with respect to Arlington National Cemetery to ensure not only the integrity of its policy(ies) for disposition of remains, but also to ensure continued access to interment at this national shrine by our nation's eligible veterans and their dependents.

The provisions of S. 1141, designed to set aside an area not suitable for burial of casketed remains for the common interment of cremated remains, seems to address this issue insofar as burial of cremated remains would then be possible for many years beyond the projected capacity for the Cemetery and Columbarium.

Our initial concern, Mr. Chairman, with the burial of cremated remains in a common area of Arlington National Cemetery is the acceptance by the veterans' community and American public of the concept of common burial for our nation's veterans. Obviously, this would be a departure from the traditional practice of marking individual gravesites of veterans and their families. It would entail commingling of remains in a common burial site -- a practice that may be viewed by some veterans and the American public as less dignified and aesthetically unacceptable for Arlington, as the "flagship" of our National Cemetery System.

Of the 113 national cemeteries nationwide, 47 are currently not open for burial or interment. This is viewed as a serious concern by many in our veterans' community, particularly in view of the demographics of our aging veterans' population that tend to demonstrate a need for an expansion of our National Cemetery System.

The approach of commingling burial remains in a common area of Arlington National Cemetery may be viewed by some as a public policy solution to scarce available gravesites nationwide in our National Cemetery System and, if implemented, may limit or restrict future burial or interment options for our nation's veterans and their dependents in our National Cemetery System.

For these reasons, Mr. Chairman -- public acceptance of the concept of commingling of remains, and the implications of this policy for our National Cemetery System -- we urge the Subcommittee to proceed with caution and carefully consider the long-term effects of the provisions of S. 1141 on our nation's veterans' community.

This completes my testimony. Again, Mr. Chairman, the DAV is appreciative of the opportunity to present our views on these important subjects.

DAV

Motto: "If I cannot speak good of my comrade, I will not speak ill of him."

DISABLED AMERICAN VETERANS

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July 12, 1989

Honorable Alan Cranston, Chairman
Senate Veterans Affairs Committee
414 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Cranston:

This is to acknowledge receipt of your letter (and attachments) dated June 30, 1989, wherein you request the views of the Disabled American Veterans on S. 1188, a bill recently introduced in the Senate by Senator Frank Murkowski.

Our views, which you have requested to be received by July 13, 1989, in order for review by your Committee prior to mark-up hearing consideration, are as follows:

S. 1188

The measure S. 1188, introduced in the Senate by Senator Frank Murkowski, purposes, through appropriate amendment of Title 38, USC, and the Internal Revenue Code of 1986, to authorize the use of Internal Revenue Service and Social Security Administration data for income verification purposes of certain laws administered by the Department of Veterans Affairs.

As specified by Senator Murkowski in his statement which accompanied the measure's introduction, S. 1188 proposes to give the Department of Veterans Affairs access to wage and income information, already collected from third parties, of the Department of the Treasury and the Social Security Administration. This information, which is presently available to other federal agencies that administer needs based programs (such as Food Stamps and Supplemental Security Income), would allow VA to protect the integrity of its means tested programs, assuring that overpayments and, we presume, underpayments are not being made.

Senator Murkowski has emphasized that the bill does not allow VA to access the income tax returns of veterans, their family members or survivors. The measure also contains specific provisions intended to protect the confidentiality of the information obtained by VA, as well as provide that any beneficiaries whose current or future benefits might be affected by the information obtained, be no notified and given the opportunity to rebut or challenge the data before VA takes any action that would change the level of benefits.

Under the terms of the bill, VA would be able to access the above cited information in order to verify eligibility to benefits in the following category of claims:

* nonservice-connected veterans and survivors pension and death pension;

* Dependency and Indemnity Compensation (DIC) paid to the dependent parents of veterans whose deaths are service related;

* veterans who are eligible for VA health care without co-payment because of low income; and

* veterans with service-connected disabilities evaluated at less than 100% disabling, but who are paid at the 100% rate due to "unemployability."

Mr. Chairman, the DAV recognizes and has no quarrel with the primary thrust of this legislation -- specifically, to allow the Department of Veterans Affairs reasonable access to information, in addition to that supplied by VA claimants themselves, in order to protect the integrity of the Department's means tested programs. We are aware that the General Accounting Office (GAO) has issued a report (GAO/HRD-88-24, March, 1988) which indicates that some $150 million in nonservice-connected pension overpayments may be occurring annually, but cannot be verified because VA does not have access to income information that, as stated above, is currently available to other agencies administering needs based programs.

Mr. Chairman, the DAV agrees that the eligibility requirements as set forth in Title 38, USC, should be fairly and accurately applied to all claimants seeking entitlement to VA benefits and services. In those VA programs that are means tested, that is, where outside income is a factor in determining the eligibility to and the actual level of benefits, the Department of Veterans Affairs has an obligation in terms of program integrity and in terms of its responsibility to the American taxpayer to ascertain that claimants receive no more or no less than that to which they are entitled.

However, Mr. Chairman, notwithstanding the above, the DAV does object to one aspect of the pending legislation. We do not believe that access to the information sought should be authorized with respect to service-connected veterans rated less than 100% disabling, but who are in receipt of the total rate of compensation due to unemployability -- the so-called "Code 18" veteran.

As you are most certainly aware, the VA's service-connected disability compensation program is not, nor ever has been, needs based or means tested. The level of these benefits, extended to veterans as compensation for the social and industrial impairment caused by service-connected disabilities, has always been based upon the severity of the conditions themselves and, unlike the nonservice-connected pension program, for example, has never been linked to outside income or earnings.

The sole "partial" exception to this -- aside from dependent parent DIC benefits which are means tested -- are the Code 18 claims cited above, where receipt of the 100% total rate of compensation payment is dependent upon the inability to engage in substantial, gainful employment. This "linkage" of the Code 18 veteran to the inability to be gainfully employed should not, however, be viewed as means testing in the normal sense of that term. Rather, the Code 18 eligibility criteria represents a means by which certain severely disabled service-connected veterans, whose disabilities prevent gainful employment but which cannot be assigned a regular schedular total rating under the VA's Rating Schedule, can nevertheless receive the 100% payment rate.

To illustrate this point, Code 18 veterans, though they are required to annually verify to the VA that they are not engaged in substantial gainful employment, can receive and do not have to provide information regarding any amount of unearned outside income they may have.

The bill itself acknowledges that the Code 18 category of claimant is not truly a means tested claimant by limiting VA's access of information from the Internal Revenue Service and Social Security Administration to only information relating to "wage" or "self-employment." As noted above, all Code 18 recipients are currently required to annually provide the VA with such information. If VA has reason to suspect that a particular Code 18 claimant is providing inaccurate information, or if VA wishes to periodically verify the accuracy of a random sampling of Code 18 claimants, the Department can, as they have in the past, conduct a field examination or survey for such purpose. Even if VA was authorized to access this information, any conflicting data received from the Internal Revenue Service or the Social Security Administration would most likely have to be verified by use of a field survey to determine if the employment involved was "substantial" or "marginal." If the latter determination was made, continuance of benefits would be authorized.

In summation, Mr. Chairman, we see no compelling reason to authorize, even in the limited fashion proposed by S. 1188, the collection of outside income/wage information for any category of VA service-connected disability compensation recipients. We fear that such an authorization could very well lead to the routine gathering of this information, thereby subverting the non-means tested aspect of the disability compensation program.

We therefore strongly object to favorable consideration of S. 1188 in its present form. Our objection would be withdrawn, if reference to the Code 18 category of VA claimant was deleted from the bill.

Mr. Chairman, we deeply appreciate being given this opportunity to provide our views on this legislation.

Sincerely,

JOHN F. HEILMAN
National Legislative Director

JFH:ejh

cc: Senator Murkowski
Congressman Montgomery
Congressman Stump

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-9000

THE GOVERNMENT NATIONAL
MORTGAGE ASSOCIATION

STATEMENT OF LOUIS C. GASPER

EXECUTIVE VICE PRESIDENT
GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

SUBMITTED TO THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

JUNE 22, 1989

Mister Chairman and Members of the Committee:

I appreciate the invitation to present the views of the Government National Mortgage Association (GNMA) on legislation concerning the future of the VA Home Loan Guaranty Program.

GNMA is a wholly-owned government corporation located within the Department of Housing and Urban Development. Our principal mission is to support the Government's housing objectives by establishing secondary markets to channel funds from the securities into the mortgage market, thereby increasing the supply of credit available for housing. GNMA guarantees the timely payment of principal and interest on privately-issued investment securities backed by pools of FHA-insured or VA-guaranteed mortgages. Over 95 percent of all FHA-insured and VA-guaranteed home loans are securitized through GNMA; VA loans comprise nearly one-third of our total business.

As a guarantor, GNMA shares in the risk taken by the lender and the VA with regard to a VA home loan. The lender who issues securities through the GNMA program is required to make pass-through payments to investors regardless of whether or not the borrowers meet their obligations. If the lender fails to make such payments, the full faith and credit guarantee of the United States requires that GNMA step in and make the necessary advances. Due to the nature of their respective programs, GNMA's potential for loss in such instances is much higher on loans guaranteed through the VA program than on those insured by the FHA. The VA guaranty extends only to a maximum of $36,000 on a $144,000 loan, making the risk to the lender--and therefore to GNMA--much greater in the VA program. Consequently, GNMA is concerned that certain provisions in the proposed legislation would serve to increase the risk to the lender, increase the loss to GNMA or might otherwise weaken the VA guaranty.

GNMA shares the concern of the committee and the VA over the solvency of the VA Home Loan Guaranty Program. We support the efforts of the Senate and the House committees and the VA with regard to the restructuring and improvement of the VA program. In so doing we support the general concept of S.1158, the "Veteran's Home Loan Guaranty Restructuring and Solvency Act of 1989." We do, however, have concerns over a number of provisions in the proposed legislation.

You have requested our comments on S. 1158 concerning the future of the VA guaranty program.

Establishment of New Revolving Fund and Fee

Under the proposed legislation a new revolving fund would be created, known as the Home Loan Guaranty Fund, to cover the costs of all housing loan operations, other than administrative expenses, for loans guaranteed or insured on or after October 1, 1989. Veterans would see an increase in the fee paid from 1-percent to 1.25-percent. Veterans who put a minimum downpayment of 5-percent of the total cost of the loan would pay a reduced fee of 3/4 of 1-percent. Veterans who put a minimum downpayment of 10-percent would pay only 1/4 of 1-percent. In addition, the bill proposes to increase the fee for assumptions from 1/2 of 1-percent to 2/3 of 1-percent, continuing the current 1-percent fee for vendee loans and making the authority for collection of the loan fees permanent by removing the sunset date of September 30, 1989.

The bill also advocates keeping the fee exemption for disabled veterans receiving compensation and for surviving spouses of veterans who died from a service-connected disability. S. 1158 requires that the VA pay the loan fee for all veterans exempt for the above reasons. In addition, the Government would be expected to contribute 1/4 of 1-percent of the total loan amount to the fund for a period of three years.

GNMA is not in a position to advise the committee on the size of the loan fee. Whereas we have no objections to the proposed fees, we do wish to express our concern over the adequacy of the fee revenue, combined with the Government contribution, in terms of meeting the obligations of both the existing and proposed revolving funds.

GNMA supports the provision allowing a reduced fee for those veterans who make a minimum downpayment of at least 5-percent on their loans. Borrowers who contribute a greater downpayment towards their home are, historically, less likely to default on their obligations.

Exemptions

GNMA fully supports the fee exemption for veterans receiving compensation for disabilities and for surviving spouses of any veteran who died from a service-connected disability. We do, however, concur with the VA in recommending that a threshold be established for exempting veterans from paying the fee. H.R. 1415, passed by the House on June 6, carries the provision that only those veterans whose disability is rated at not less than 30 percent are exempt from payment of fees. GNMA supports the establishment of such a threshold.

Liability

S. 1158 provides for the release of liability to the VA for any veteran who pays a fee, or is exempt from paying a fee, on or after October 1, 1989, except cases involving fraud, misrepresentation or bad faith on the part of the veteran and any default that resulted from circumstances not beyond the veteran's control. As GNMA shares in the financial risk to the lender when a homeowner defaults we are concerned about the release from liability provision of the bill. GNMA recognizes that in some instances a default may be due to circumstances beyond the veteran's control and that it may, in fact, be impossible for the VA to collect the debt. In such instances we support release from liability on a case-by-case basis with the circumstances beyond the veteran's control subject to the review of the Secretary of Veterans Affairs, and not to include any instance involving fraud, misrepresentation or bad faith on the part of the veteran.

Sale of Vendee Loans

GNMA has no objection to section 3 (a) of the bill that would extend current law relating to the sale of vendee loans. We note that this provision differs from the provision in H.R. 1415 that would have restricted the VA's ability to sell loans without recourse. GNMA concurs with the VA in supporting the provisions in S. 898, the "Veteran's Housing Amendments Act of 1989," that permits the VA to sell loans in a cost-effective manner, either with or without recourse.

Purchase of Additional Entitlement

Section 4 of the bill would allow veterans to purchase additional entitlement, up to $10,000 for a loan by paying a fee of .1-percent for each additional $1,000 of entitlement. GNMA opposes this section of the proposed legislation.

It is our understanding that the intent of this provision is aimed at assisting those veterans who reside in high cost areas of the country. Increasing the maximum VA guaranty to $46,000 does not increase the maximum loan amount. This is due to the fact that nearly all VA loans are securitized through the GNMA MBS program. GNMA's maximum loan amount for pooled loans is $144,000 or 4 times the present VA guaranty.

Due to recent losses stemming from defaults of VA Home Loans and the VA's "no-bid" policy, GNMA would strongly oppose any increase in the loan limit relating to VA loans. Although the option to purchase additional entitlement could assist certain veterans, because of the additional risk for GNMA we cannot support this provision unless the VA program is restructured to fall more along the lines of the FHA's full insurance program.

"No-bid" Formula and Cost of Funds

GNMA would like to express our concern over the provision that would allow the VA to consider the cost of borrowing funds in determining the net value of a property for the purpose of the "no-bid" formula.

Any increase in the number of VA "no-bids" produces savings to the VA, but increases losses to the lender which could potentially result in losses to GNMA. Recently, GNMA was forced to default six institutions in the oil belt states with financial problems that included losses linked to VA "no-bids." Lender losses on loans resulting in a VA "no-bid" average over $20,000 per loan.

The "no-bid" formula allows the VA to pay the guaranty claim to the lender, requiring the lender to dispose of the property. The VA has recently proposed regulatory changes that would include the cost of borrowing funds needed to purchase a foreclosed property in determination of whether to acquire a property or "no-bid" at the foreclosure. Including such costs, even to the extent reflected in S. 1158, would increase the likelihood of a VA "no-bid" in lieu of a VA acquired property.

The lenders who are issuers in the GNMA program suffer losses from VA "no-bids" because they are required to advance additional funds to payoff the loan from the GNMA pool when they receive the VA guaranty funds. Although a few VA "no-bids" can usually be absorbed by the lender, large increases could cause some lenders to further delay claim filings and eventually face bankruptcy through a loss of all their net worth needed to pay for necessary advances to GNMA investors. If the lender fails to meet its obligations GNMA is forced to place the institution in default, seize the GNMA portfolio and remit the necessary payments to the GNMA investors. A portion of the losses from VA "no-bids" are thereby incurred by GNMA, and by the federal government, although not by the VA.

Notwithstanding these concerns, GNMA recognizes that S. 1158--which would allow VA to consider one-half of the amount by which the cost of borrowing the funds necessary to acquire the property exceeds the cost of borrowing the funds needed to pay the guaranty--represents a reasonable compromise between VA's desire to maximize savings and our need to minimize lender losses and, subsequently, losses to GNMA. GNMA is currently reviewing the requirements of the GNMA MBS program in consideration of alternative means to minimize future losses.

In summary, GNMA would again like to express our support of the efforts made by the committee and the VA in terms of addressing the solvency of the Loan Guaranty Program. We hope to work with you to ensure that the interests of the VA, GNMA and the lenders are fully addressed with regard to the financial risks of foreclosure. We commend the efforts to reduce the costs to the VA Guaranty Fund; however, we urge consideration of the concerns addressed above so that future savings to the VA are not off-set by future losses to GNMA.

This concludes my submitted statement. I will be happy to respond to any questions you or the members of the committee may have.

FRATERNAL ORDER OF POLICE

Veterans Administration Police Lodge 13
P.O. Box 5427
Wilmington, Delaware 19808-0427

June 13, 1989

Senator Joseph R. Biden
U.S. Senate
431 Russell Senate Office Building
Washington, D.C. 20510

Senator:

I am Robert Hargrove, President of VA Police, Lodge 13, Wilmington, Delaware. My qualifications for submitting this letter are as follows:

> 21 years as a Wilmington, Delaware Police Officer, 15 of those years in a supervisory position.
>
> 2 years of college plus many seminars and individual courses in different aspects of Law Enforcement.
>
> 2 years as a D.V.A. Police Officer.

Because of this experience and education, my concerns about the future of the D.V.A. Police Service are outlined below.

In regards to Senate Bill 13, let me express my concerns as to Section 221 and Paragraph (f) section 218.

As you know, the Department of Veterans Affairs Police in the past has been beset by personnel problems as well as operational inadequicies. As a member of the Department of Veterans Affairs Police, I take pride in my job and would like to see some corrective action taken. After consulting with other Department of Veterans Affairs Police Officers from across the country, I feel the below listed areas of concern should be addressed.

I. MANAGEMENT

A promotion to Director of Security Service from within the present command structure will only result in a continuation of past practices which have frustrated Department of Veterans Affairs Police Officers. These practices have contributed greatly to a turnover rate which is shameful.

In order to correct the problem, a person from outside the Department of Veterans Affairs with police supervisory experience should be appointed. A fresh look at the organization, or lack of it, is needed. Career advancement opportunities must be built into the system in order to attract and retain quality people.

II. PAY

At present, most Department of Veterans Affairs Officers are rated GS-5. The GS-5 starting salary is $15,738.00. The Department of Veterans Affairs requires applicants to have a minimum 3 years experience and/or 4 years of college. These requirements exceed many imposed by local law enforcement agencies that have a far higher starting salary.

In my own case, I had, upon application, 21 years experience with the Wilmington, Delaware Police Department, fourteen of those years as a supervisor, and two years of college. In addition, I am a certified Police instructor. It took a lot of recruitment skills on the part of my chief to convince me to take this job upon my retirement from the Wilmington Force. Because I have a second source of income, it is possible for me to live comfortably. How can we expect qualified people to accept a position and stay with us at this salary, especially when it takes 15 years to reach the top pay of $20,463.00?

III. RETIREMENT

Department of Veterans Affairs Police officers are excluded from the Law Enforcement Personnel Pension Program. To the best of my knowledge, this exclusion is entirely Department of Veterans Affairs policy and completely arbitrary.

The qualifications for the Law Enforcement Annuity are: "If you are an employee whose duties are primarily in the following catagories: (a) The investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States, you may voluntarily retire if you are age 50 or over, and have completed 20 years of such service".

In addition to the duties stated above, we, Department of Veterans Affairs Police Officers, perform these tasks unarmed which adds to the stress of the job.

IV. WEAPONS

Title 38 U.S.C. Section 218 provides authority for the Department of Veterans Affairs to arm it's Police Officers. A policy adopted by the Department of Veterans Affairs administrators (not one of whom has police experience) allows only certain investigators to be armed. This despite the fact that Department of Veterans Affairs Police Officers have been shot and killed while performing their duties.

In testimony before Senate Committees or sub-committees previous administrators have testified about the number of incidents that Department of Veterans Affairs Police Officers have handled without being armed. In not one line of testimony has the number of Police Officers injured or killed while handling these incidents been mentioned.

To me and my brother officers, this represents a callous disregard for our lives. As an example of this disregard consider that when officer Ron Hearns was shot and killed in June, 1988 at the Department of Veterans Affairs facility in the Bronx, New York, a description of his killers was never sent to any other Department of Veterans Affairs facility. Common sense would dictate that this be done for the protection of officers at other facilities.

V. TRAINING

Department of Veterans Affairs Policy is to hire persons with prior law enforcement experience. This extends to Military Police experience. As a result of this experience requirement, the Department of Veterans Affairs feels that a two week school is sufficient. I disagree to the extent that local police experience and Military Police experience differs greatly from Federal Law Enforcement, and particularly at Department of Veterans Affairs facilities.

Training could be greatly enhanced if all future Department of Veterans Affairs Police applicants were first sent to the Police Training Facility at Glencoe, Georgia and then attend the training course at the Department of Veterans Affiars Police School.

VI. MINIMUM STAFFING

As a matter of safety, there should be at least two officers on duty at all times. At present, smaller facilities have only one officer on duty, particularly on the night shifts. If an incident should take place at these times, the officer must rely on local police response for back-up. Needless to say if there is any delay in response the un-armed Department of Veterans Affairs Officer is placed in danger.

In addition, preventive patrols must be made regularly which leaves the police office unmanned. Located in the police office are many alarms which go unattended. This places the patients and employees in a dangerous situation if anything should happen.

VII. INTRA-DEPARTMENTAL C

As stated previously, when a Department of Veterans Affairs officer is assaulted no communication of any type is sent to other Department of Veterans Affairs facilities At the very least descriptions of assailants and method of assault should be provided to all Department of Veterans Affairs facilities for the protection of the officers. Most police agencies provide this information to their officers and other agencies so other officers will be aware of the incident and can avoid a repeat of the incident.

From this lack of communication, we can only conclude that this is a policy by Central Office and the major concern is that the incidents must be kept quiet and avoid any effort by police officers to be trained and equipped with firearms.

In conclusion, let me say, that the concerns expressed above are shared by most Department of Veterans Affairs Police officers. These officers take pride in their jobs and are dedicated to the Department of Veterans Affairs mission to provide the best care possible to our veterans. This includes the right of our veterans, visitors and employees to be safe in their persons and property while on Department of Veterans Affairs property. This can only be accomplished by providing adequate security and law enforcement personnel.

Thank you for your consideration.

Robert Hargrove, President
VA Police, Lodge 13

Manufactured Housing Institute
1745 Jefferson Davis Highway, Arlington, Virginia 22202/ (703)979-6620

July 13, 1989

Mr. Michael W. Cogan
Senate Committee on Veterans' Affairs
Room 414, Russel Senate Office Building
Wasington, DC 20510

Dear Mr. Cogan:

Thank you for offering us the opportunity to comment on legislation being considered related to the Department of Veterans' Affairs home loan guaranty program. The comments we offer here concern S.1158 and H.R.1415 and a subject not addressed by any of the bills in question: the requirement that a veteran purchasing a manufactured home with a VA-guaranteed loan must make a five percent downpayment. Following those comments is some background on the Manufactured Housing Institute, the manufactured housing industry and the VA home loan guaranty program for manufactured homes.

Home Loan Guaranty Fund (S.1158;H.R.1415)

We support the goal of strengthening the VA Home Loan Guaranty Program because we believe it provides an important benefit to veterans that they deserve to have continued. We are concerned, however, that the creation of a mortgage indemnity fund may not fully accomplish that purpose. And, the indemnity fund places a large part of the burden of paying for the program squarely on the backs of veterans. It could drive veterans from the Program, and as a practical matter, the imposition of a fee introduces a fundamental change in the nature of the Program.

Collecting a fee for using the Program has the effect on the veteran of changing the benefit program to an insurance program where most of the premiums are collected at the beginning of the policy. To the extent that the mortgage indemnity fund proposal takes the VA Program in the direction of an insurance program, it could lead to the abolition of the Program by its merger into the Federal Housing Administration (FHA) loan insurance programs.

Certainly the VA revolving fund cannot continue to sustain losses, as it has over the last two years, without seriously jeopardizing the entire VA program. We all know that new money for programs such as this one is not likely to be forthcoming, at least for the near future, and there is continuing pressure to reduce the federal budget deficit. Additional authorizations may be necessary over the next several years to pay for additional losses in the absence of some kind of self funding program such as the one proposed. We know those to be the realities, but we question the fairness of the mortgage indemnity fund proposal to the veteran, who has every right to expect the same benefits as those who served before him.

Introducing a 1 1/4 percent fee into the transaction adds to the loan balance without adding to the value of the collateral. So, if the borrower is unfortunate enough to be in an area of the country where home prices are not rising rapidly, experiences the loss of employment, illness, or some other unfortunate event early in the loan, it will lead to a default on the loan and a loss to the VA. The borrower will not have paid off enough principal to build any equity, prices will not have risen enough to build equity, and the difference between the value of the home and the loan balance will have been made greater by the indemnity fee.

While financing the mortgage indemnity fee has detrimental effects, in our opinion, requiring that it be paid in cash would be even more devastating. That would make the purchase of a home under the program virtually impossible for the low and moderate-income veteran. It would eliminate most, if not all, of the advantage of the no downpayment feature of the VA Home Loan Guaranty Program.

We would respectfully submit that the introduction of a mortgage indemnity fee would work to the detriment of the veteran borrower. While it might turn the Program into a pay-as-you-go program, it would undermine the benefit nature of the Program to the veteran. That would be an unfortunate disservice to the thousands of men and women who have sacrificed so much in the service of their country.

Downpayment on Manufactured Home Loans

For veterans who purchase a manufactured home with a loan guaranteed by the VA, the benefits of the program have already been reduced. The Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987 (P.L. 100-198) imposed a five percent downpayment requirement on loans secured by a manufactured home. This is a major departure from the no downpayment feature of the VA Home Loan Guaranty Program generally. Loans secured by site-built homes still require no downpayment under the VA Program.

It seems incongruous that veterans purchasing more expensive site-built homes may do so with less cash than veterans purchasing manufactured homes. Veterans who purchase manufactured homes generally are borrowers with low to moderate incomes who cannot qualify for a loan on a site-built home. The added burden of a five percent downpayment makes the purchase of a manufactured home even more difficult, and in many cases, prevents the veteran from using a benefit earned from years of service in the armed forces.

Since the implementation of the downpayment requirement on manufactured home loans in February 1988, loan volume in the Program has slowed to a trickle. Only 1,674 manufactured home loans were guaranteed by the VA in 1988, the lowest annual volume in the Program since its inception almost 20 years ago. Monthly loan volume has declined from an average of 200 to 400 loans per month to less than 100 per month.

We would urge the committee to eliminate the downpayment requirement on VA-guaranteed manufactured home loans, return the Program to a parity basis with its site-built housing program, and return the benefit to the veteran this requirement took away.

BACKGROUND INFORMATION

Manufactured Housing Institute

The Manufactured Housing Institute (MHI) is a national trade association representing manufactured home builders and related suppliers of goods and services to the industry and its consumers. MHI manufacturer members produce approximately 60 percent of the manufactured homes built in the United States today.

The Manufactured Housing Insdustry

The advantages of mass production spawned the development of factory-built housing over 50 years ago. Today there are several forms of factory-built homes, including modular, panelized, and manufactured homes. Our remarks concern themselves with the form of factory-built housing known as manufactured homes, formerly known as mobile homes.

Manufactured homes are delivered from the factory in one or more sections. They are completely assembled and require only minimal labor to make them ready for occupancy once delivered to a home site.

Manufactured homes are built to federal standards prescribed by Congress in the National Manufactured Housing Construction and Safety Standards Act of 1974 (P.L. 93-383). These standards were developed and implemented by the Department of Housing and Urban Development (HUD) in June 1976. As a result of HUD's involvement, these homes are commonly referred to as HUD code homes. Since developing the standards, HUD has maintained its surveillance of the manufactured housing industry, primarily through its agent the National Conference of States on Building Codes and Standards.

Innovative technology, improved aesthetics, and a federal construction code that ensures consistent health and safety standards throughout the U.S. have all played a significant role in making manufactured housing an important part of the permanent housing stock in America.

Since the beginning of the decade through the end of 1988, manufactured home builders have produced 2.270 million homes, accounting for 14.3 percent of the 15.817 million privately-owned housing construction started during the decade. The 1985 American Housing Survey, the most recent of the biannual housing surveys published by the Department of Commerce, indicates that there were 88.4 million full-time occupied housing units at the end of 1985, including manufactured homes. Full-time occupied manufactured homes accounted for 4.8 million, or 5.4 percent, of the total occupied housing units in the U.S. at the end of 1985 according to the survey.

The Veterans Administration Manufactured Home Loan Program

The Veterans Administration (VA) was first authorized to guarantee loans on manufactured homes by the Veterans' Housing Act of 1970 (P.L. 91-506). The 1970 Act provided for termination of the Program on July 1, 1975 to give Congress time to evaluate it. The Program became permanent with the passage of the Veterans' Housing Act of 1974 (P.L. 93-569), and Congress affirmed its belief that the VA Manufactured Home Loan Guaranty Program was beneficial and provided a good source of housing to veterans.

The Program has provided more than 111,000 veterans the opportunity to own their own home from its inception through 1988. For this reason, we believe that it is an important and valuable part of the overall benefits provided to veterans through the various activities carried out by the VA.

Manufactured home loans guaranteed by the VA are eligible for pooling into Government National Mortgage Association (GNMA) mortgage-backed securities. So, the VA Program also provides an important access to loan funds available through institutional investors and others who buy GNMA securities. Access to investors through secondary markets has become an increasingly important source of funds for housing finance in the 1980's. And, at this time, GNMA is the only organized secondary market source for publicly traded securities backed by manufactured home personal property loans.

Conclusion

While we appreciate the fiscal pressures on the VA's revolving fund, we question whether the kind of fee proposed in S.1158 can be imposed on the veteran and the program still be called a benefit program. We also feel that to require a downpayment from lower income veterans who purchase manufactured homes while allowing higher priced homes to be purchased without a downpayment is an unfair practice regardless of its intent to lower losses to the VA. If that policy were strictly adhered to then all lower priced housing purchased by low- and moderate-income veterans, not just manufactured housing, would require a five percent downpayment.

We thank the Committee again for the opportunity to offer our view and will provide any additional information we can at the Committee's request.

Sincerely,

Jerry C. Connors
President

1125 Fifteenth Street, N.W.
Washington, D.C. 20005

Mortgage Bankers Association of America

Burton C. Wood
Senior Staff Vice President
and Legislative Counsel
202-861-6507

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JUL 6 REC'D

July 5, 1989

The Honorable Alan Cranston
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In response to your request dated June 23, MBA is pleased to submit its comments on S 1146, introduced on June 7, 1989, by Senator Spark M. Matsunaga (D-HI). S 1146 would provide for a pilot program for direct housing loans by the Department of Veterans' Affairs (VA) to Native Americans on Native American trust land.

As Senator Matsunaga points out in his introductory statement in the June 7 Congressional Record, it is "extremely difficult for Native American veterans to obtain home loans." Among the reasons for this situation is the fact that the land beneath the homes is nontransferable tribal land offering little security value to mortgage lenders. Because a viable security interest is integral to mortgage lending, the private sector is deterred from providing mortgage funds to these veterans. In addition, because the VA discontinued its direct loan program in 1981, this funding source is no longer available.

MBA certainly understands the plight of the Native American veterans who have served this country, but are effectively denied one of the benefits due them because of that service. MBA does not object to a pilot program to have the VA make direct housing loans to these deserving veterans with funds appropriated for that purpose. However, we believe the direct loans should be segregated in a separate accounting entity and not be sold, but should be retained by the VA because the principal and interest payments could provide funds for future direct loans to Native Americans, should the program prove feasible. Also, it is likely that these loans would have more value to the VA for their streams of income than as assets for sale in the financial markets.

Not to be overlooked, however, is the current financial strain on the Loan Guaranty Revolving Fund and the attempts by Congress and the Administration to reduce this stress. We believe that any initiatives should take into consideration this situation and whether the Government would be willing to fund it on a continuing basis. Lenders are bearing more and more costs of the home loan program and would be reluctant to support any initiative that would cause a further shift of the program's losses to them.

Thank you for the opportunity to express our view on S 1146. Please let us know if there is anything further we can provide.

Sincerely,

Burton C. Wood

NATIONAL ACADEMY OF SCIENCES

2101 Constitution Avenue Washington, D.C. 20418

OFFICE OF THE PRESIDENT

June 21, 1989

The Honorable Alan Cranston, Chairman
Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your invitation to submit written comments on the role proposed for the National Academy of Sciences in the bill S. 1153, the "Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989." Because of the complexity and importance of the tasks proposed for the National Academy of Sciences, this letter represents a preliminary response but one that I hope will be useful for the purposes of your hearing tomorrow. We shall continue to examine the terms of the request and shall appreciate an opportunity to discuss them with the Committee staff before the legislation is marked up.

In general, we are willing to undertake the role referred to in the section, "Utilization of Contract Scientific Organization," if Congress and the Department of Veterans Affairs wish us to do so and we are able to reach a suitable contract agreement with the Department.

As you know, the Institute of Medicine of the NAS is currently overseeing the CDC Study of the Health of Vietnam Veterans. A series of letter reports document our review of the study protocols, methods, and instruments and of preliminary statistical analyses and conclusions. One phase of this project, a cohort study of the long-term health effects of military service in Vietnam, was completed in 1988. The current phase, a case-control study of selected cancers among Vietnam veterans, is due to be completed early in 1990.

At this stage in your consideration of S. 1153, I want to draw your attention to two substantive concerns that we can explore further. First, the specification of categories of relationship between exposure and disease (i.e., "positive association," "limited positive association," and "insubstantial association") appears to be restrictive. We believe that the independent expert review panel envisioned in the bill should have the flexibility to develop its own framework and categories.

Second, we need to consider whether the review is to include studies dealing with the health effects of military service in Vietnam as well as studies dealing with exposure to agent orange or dioxin per se. Some of the strongest health effects studies are based on Vietnam service rather than agent orange exposure. In fact, the CDC has determined that it is virtually impossible to examine agent orange exposure more directly.

We look forward to working together with the Committee on this legislation. In that regard, Steve Merrill of our Office of Government Affairs (334-1601) is available to consult with your staff on details of legislative requests to the Academies and to put them in touch with expert staff of the IOM and NAS to discuss the issues raised above.

With kind regards,

Yours sincerely,

Frank Press

Frank Press
President

Pat Broudy
Legislative Director
33492 Periwinkle Drive
Laguna Niguel, CA 92677

NATIONAL ASSOCIATION OF
RADIATION SURVIVORS

EXPRESS MAIL

July 3, 1989

Senate Committee on Veterans' Affairs
Room 414, Russell Senate Office Building
Washington, D.C. 20510

Attention: William Brew

Dear Bill:

In order to accommodate the limited time period for response to your letter of June 12, 1989 together with its enclosures, I have consulted with our President, George Seabron and our Executive Director, Fred Allingham, but not with our entire board, regarding your request to comment upon the proposed legislation outlined in S.1243.

Even though this legislation would be modeled primarily on the United States Tax Court program, there are inconsistencies in the two entities which preclude the wholesale inclusion and/or exclusion of the Tax Court's retirement system principles, in particular the fact that the Court of Veterans Appeals is dealing with an entirely different class of individuals -- veterans. Thus, because of these inconsistencies, NARS would suggest the following changes and/or clarifications, not in the spirit of controversy, but in an effort to identify some of the issues:

(From Senator Cranston's Introduction)
SUMMARY OF PROVISIONS (Survivors Annuity Plan)

(1) "(a)...However, a surviving spouse who is eligible for an annuity under any law other than this measure based on service not used in the computation of the Court of Veterans Appeals survivors annuity (which includes the judge's Federal civilian service and up to 5 years of the judge's active military service)..."

Please clarify "up to 5 years of the judge's active military service." If a retired servicemember dies subsequent to 1956, his widow will, at age 62, receive a social security offset of her Survivors Benefits (SBP), in some cases amounting to 40% of her SBP. The military started paying social security taxes on the pay of the active duty servicemember in 1956. How does this apply to a Judge's surviving spouse if he is a former, retired servicemember?

(2) "(f) Whenever the salaries of Court of Veterans Appeals judges is increased, the amount of an annuity which is based in whole or in part upon a deceased judge having rendered some portion of his or her final 18 months of allowable service as a judge of the court shall also be increased by an amount equal to 3 percent of the annuity for each full 5 percent by which the salary is increased."

These judges will be adjudicating claims of survivors of veterans whose meager pensions are adjusted only by the Cost of Living (COLA) increases and whose husbands died as a result of service in defense of their country. Please comment on this disparity.

(3) "(g) ...Where there is no surviving dependent child the surviving spouse is not eligible for annuity payments until attaining age 50."

Why must the widow of a judge wait until she is 50 to receive benefits? The military allows widows of retired servicemen to start receiving benefits immediately upon the death of the serviceman, if he has so elected; however children are not provided for in a retired serviceman's election of SBP unless specifically provided for by him.

(Remaining Provisions of the Bill)

(4) "(f) Provide for the Court permanent authorization to use the authority in section 3109 of title 5 to employ the services of experts and consultants."

The employment of experts and consultants in determining causal relationship of the veteran's illness or death shall be with the approval of the claimant as to acceptability of such expert in making said determination.

(5) "(i) Make one technical correction in the Department of Veterans Affairs Act, Public-Law 100-527, so as to provide for certain non-career appointments to be made in the Department of Veterans Affairs."

We suggest a change, adding at the end of that sentence "by qualified veterans only."

RETIREMENT AND SURVIVORS ANNUITY SYSTEM

(6) "...Judges...would be eligible to retire after age 65, upon having served at least 15 years...Upon retirement, a judge would receive the equivalent of the salary of the office at the

time of the judge's retirement for the rest of his or her life..."

Since, hypothetically, a Judge commences his tenure at age 50, he or she has had the opportunity to accumulate several retirement pensions, and in addition receives full salary at the end of his/her 15-year stint as a Judge of the Court of Appeals. The veterans and/or their survivors will be aware that they are being judged by men/women who may or may not be qualified to determine their eligibility for VA benefits, by virtue of the fact that they may or may not have experience in such determinations.

(7) "Recognizing the importance of encouraging a child towards higher education by providing support through his or her years of schooling, this bill would entitle a child to an annuity payment until that child reaches age 18 or, in the case of a full-time student, until age 22."

We would suggest adding at the end of that sentence "to be offset by any social security benefits that child may be entitled to from the deceased parent."

In addition to the questions, suggestions and comments accompanying the quotes from Senator Cranston's introductory statement, we have the following questions and suggestions for inclusion in these written views:

1. Who selects the Judges for the Court of Veterans Appeals, and what are his/her qualifications for said selection?

It is our suggestion that members of veterans service organizations in addition to NARS and NAAV be consulted in this regard.

2. In addition to the employees of the new Court of Veterans Appeals, will the judges also be selected on the basis of their veterans preference?

It is our desire to make this a prerequisite to any selection.

3. What are the qualifications determining the selection of the Judges?

We would suggest as absolutely essential that the candidates for these positions be former practicing attorneys who have specialized in federal court cases. We would not desire former attorneys who have been employed by the federal Justice Department.

Thank you for including us in your solicitation of views on S. 1243.

Very truly yours,

Pat Broudy

Pat Broudy
Legislative Director

cc: Honorable Frank H. Murkowski
George Seabron, President, NARS
Fred Allingham, Executive Director, NARS

STATEMENT OF THE
NATIONAL ASSOCIATION OF REALTORS®
BEFORE THE SENATE VETERANS AFFAIRS COMMITTEE

JUNE 22, 1989

Introduction

Mr. Chairman, Members of the Committee, the NATIONAL ASSOCIATION OF REALTORS® appreciates this opportunity to present its written views with respect to several legislative proposals regarding the Department of Veterans Affairs (DVA) Home Loan Guaranty Program presently pending before your Committee. We recognize the commitment demonstrated by the Committee to ensure the continued availability of affordable mortgage finance to meet the housing needs of our veterans, and we stand ready to work with you in developing comprehensive legislation that satisfactorily meets those needs.

As you know, the VA Home Loan Guaranty Program was established as an entitlement program under the Serviceman's Readjustment Act of 1944 to assist veterans achieve homeownership. Since its inception, this program has been instrumental in providing homeownership opportunities for our veterans who have given of themselves in service to our country. Over the last 45 years, the home loan program has enabled more than 12 million American veterans to purchase and maintain their homes.

The Committee has requested our written comments specifically with respect to legislation regarding the VA Home Loan Guaranty Program introduced in the Senate and H.R. 1415, passed by the full House on June 6, 1989. While we have limited our comments to those provisions which are of specific interest and concern to our Association, we recognize and support other provisions which enable veterans to fully utilize their VA benefits.

Increase in Funding Fees

The NATIONAL ASSOCIATION OF REALTORS® has maintained a policy position which opposes any increase of costs assessed to veterans, i.e., funding or user fees, in the Home Loan Guaranty Program, because they clearly undermine the entitlement nature of the program, a point which was clearly articulated by Congress upon the program's enactment. Accordingly, we would support the provision in S.404 which would keep the funding fee at 1% through 1991.

We have, however, reservations regarding S.1158 for two reasons. First, it would increase the funding fee from its current 1% to 1.25% with respect to any loans made or assumed after September 30, 1989, with discretionary authority vested in the Secretary of the DVA to increase the fee to 1.5%. (The Federal Government would pay one quarter of 1% for three years). The proposed increase in the fee on loans would raise up-front costs for veterans and represent a tax on veteran homebuyers.

We recognize that supporters of this legislation contend the entitlement nature of the program is maintained in that the proposed increase in the upfront fee is more than offset by complete indemnification upon default. While there may be some merit in this argument, it disregards an even more fundamental problem--the initial ability of veterans to pay the potential 50 basis point increase at all. Given the ever-increasing housing affordability crisis of higher housing proces and interest rates, 50 basis points could mean the difference between a veteran owning or not owning a home. We believe it is more critical to ensure that the veteran be afforded every opportunity--at the outset--to purchase a home. Unilateral protection of the veteran once he or she has already purchased a home does not vitiate or otherwise diminish the initial hurdle. Consequently, we cannot support the proposed increase in the upfront funding fee.

While we do not support the increase in the funding fee for VA-guaranteed mortgages, we do recognize that the Loan Guaranty Revolving Fund is currently insolvent and further, that continued success of this program depends largely on the implementation of measures to ensure its financial viability. Since 1983, nearly $2.3 billion in external financing has been needed for the Fund. Out of that total nearly $1 billion was needed in fiscal year 1988 alone. Moreover, an additional $658 million has already been appropriated for fiscal year 1989 and another $120 million in supplemental funds is awaiting Congressional action.

Second, even if the Association could support an increase in the funding fee, we would have serious reservations regarding provisions in the legislation which would authorize the Secretary of the DVA to increase the funding fee to 1.5%, with advance notice when the President submits to Congress the budget for the fiscal year in which the increase is proposed to take effect. We believe that the authority to establish or to raise fees for federal programs such as the Home Loan Guaranty Program is one properly vested with and the responsibility of Congress, and should in no fashion be left to the discretion of the regulator.

Indemnification

Both S.1158 and H.R.1415 as passed by the House, would -- in return for payment of the proposed increased funding fee -- provide indemnification for a veteran from repayment of the guarantee to the DVA resulting from default on a VA guaranteed home loan.

It is our belief that veterans should, when faced with default and foreclosure, be provided every possible opportunity to maintain, rather than incentives to abandon, their homes. Aside from homeownership being the central component of the American Dream, a key motivation for a homebuyer to maintain his or her home is the degree of personal liability for the loan. Moreover, legislation which releases or indemnifies veteran-borrowers from liability to the Government for not repaying the guarantee could exacerbate problems in real estate markets in economically depressed areas.

We do support, however, provisions in S.1158 and H.R. 1415 which carve out exceptions from indemnification in cases of fraud, misrepresentation, bad faith, or circumstances not beyond the veterans control. Clearly, no veteran, or indeed, no homeowner who has acted in bad faith or in a fraudulent manner in order to obtain a home loan should be released from liability in the event of foreclosure. We concur that no special consideration is due in any case of fraud, misrepresentation or bad faith, or circumstances in which the veteran has a degree of control. Yet we do acknowledge that there are occasions where it is appropriate for a veteran to be indemnified. Accordingly, the NATIONAL ASSOCIATION OF REALTORS® believes the release of liability or indemnity should be allowed by the Department of Veterans Affairs on a case-by-case basis. Allowing the Department this option would enable it to release or retain collection rights as appropriate depending on the facts in each individual case.

Early Notification to DVA

We support provisions in both S.1158 and H.R.1415 which require the lender of a guaranteed loan to notify the DVA if such lender refused to accept a partial payment from a delinquent borrower. The lender would be required to advise DVA of the circumstances of the default and the reasons the holder refused to accept a partial payment.

The Association believes that early notification of partial payments meets two critical needs. First, it may enable a veteran to remain in his or her home in that it allows the DVA to target those cases in which a veteran has made a bona fide attempt to make a payment on the loan and avoid foreclosure. These cases may be potentially curable with timely servicing and special borrower counseling. Second, reduced foreclosures will obviously reduce total costs to the United States Government.

No-Bid Formula

The NATIONAL ASSOCIATION OF REALTORS® opposes any legislative or regulatory proposals to include cost of funds in the no-bid formula calculation. First, such efforts violate clearly enunciated Congressional intent regarding enactment of the no-bid formula pursuant to Section 2512 of the Deficit Reduction Act of 1984 (P.L. 98-369). In the Joint Explanation Statement accompanying the Conference Report on that legislation (H.Rept. 98-161, p.1377), the conferees stated:

> [We do] not intend to change the VA's current policy on not considering interest costs that the United States would incur if it were necessary of the Government to borrow the funds for a particular acquisition.

The proposal to revise the definition of "net value" by taking into account the Government's cost of borrowing funds as a determining factor, clearly violates this legislative mandate.

Second, from a practical standpoint, veterans stand to lose the most because this proposal will seriously threaten the survival of the Home Loan Guaranty Program itself. It will increase the proportion of no-bid decisions and concomitantly, lenders' losses to the point that they are no longer willing to participate fully in the program. In fact, many have already refused to continue in the program; others have imposed downpayment requirements and tightened underwriting. If the current proposals are implemented, more lenders will refuse to make VA loans, and others will continue to impose additional requirements.

The NATIONAL ASSOCIATION OF REALTORS® supports the provision in S.1158 which would extend the current no-bid formula by which the VA determines whether it will acquire at foreclosure the property securing a VA guaranteed loan.

Increase in Fee for Assumptions

S.1158 would increase the current fee for an individual who assumes a VA mortgage from one-half to two-thirds of one percent of the balance of the loan. The NATIONAL ASSOCIATION OF REALTORS® supports this provision because if a veteran has to pay a one percent funding fee to originate a VA guaranteed loan, then it is not unreasonable to ask a non-veteran who wishes to assume a VA loan to pay a two-thirds of one percent funding fee. The Home Loan Guaranty Program was not designed to benefit all American homeowners; the Home Loan Guaranty Program was designed to benefit those who served this country. VA loans will still be marketable because of the "assumability" factor.

Sale of Vendee Loans

The NATIONAL ASSOCIATION OF REALTORS® supports provisions in both S.1158 and H.R.1415 which would authorize the DVA to sell vendee loans, with or without recourse, provided that the purchase price is at least 90% of the unpaid loan balance. NAR has long sought to ensure that the sale of VA vendee loans does not result in the dumping of valuable VA assets. The Association is pleased to support the provision in H.R. 1415 which provides a meaningful minimum threshold and we urge the Senate to adopt similar language.

Option to Buy Additional Loan Guaranty Entitlement

The NATIONAL ASSOCIATION OF REALTORS® supports provisions in S.1158 which would permit a veteran to pay an additional one-tenth of one percent for each additional $1,000 of entitlement up to a maximum of $10,000.

Currently, the DVA will guarantee fifty percent of loan amounts up to $45,000; the guarantee decreases to forty percent for loans in excess of $45,000. The statutory ceiling of the guaranty, however, cannot exceed $36,000. Generally, lenders will underwrite and fund a VA-guaranteed mortgage for four times the guarantee or $144,000 because of maximum mortgage limits and loan to value requirements established by GNMA.

Assuming that GNMA continues its current loan to value requirements for credit risk concerns, increasing the maximum guarantee to $46,000 will enable a veteran to qualify for an increased loan amount up to $184,000. The NATIONAL ASSOCIATION OF REALTORS® supports this proposal because it will enable more veterans to purchase home, particularly those located in high cost areas of the country, through participation in the VA Home Loan Guaranty Program.

While the Association supports this proposal, we envision the option of a veteran to purchase additional loan guaranty entitlement as a separate enhancement to the basic housing entitlement, not a substitute for it. Therefore, we would have grave concerns regarding this approach if it would directly or indirectly preclude the DVA from adjusting the basic entitlement amount in the future.

REALTOR®

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July 7, 1989

The Honorable Alan Cranston
Chairman, Committee on Veterans Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for requesting our comments on S. 1146, introduced on June 7, 1989, by Senator Spark M. Matsunaga (D-HI), which would require the Secretary of the Department of Veterans Affairs to conduct a pilot program to make direct housing loans to eligible Native American veterans for the purchase of housing on Native American trust lands. The NATIONAL ASSOCIATION OF REALTORS® applauds you and Senator Matsunaga for taking the initiative to address the problem of homeownership for Native Americans on housing trust lands.

The NATIONAL ASSOCIATION OF REALTORS® has always supported the authority of the Department of Veterans Affairs to make direct housing loans. We are encouraged that this pilot program may "re-open the door" for the Department of Veterans Affairs to have a Direct Loan Program. The Association does not have policy on the issue of housing loans on Native American trust lands; consequently, we do not feel qualified to comment on S. 1146 at this time. However, we will put this issue on the agenda for our next legislative meeting with our members.

Again, thank you for the opportunity to comment on S. 1146.

Sincerely,

Stephen D. Driesler

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TESTIMONY OF

PAUL W. SCHAFER, M.D.

EXECUTIVE DIRECTOR

NATIONAL ASSOCIATION OF VA PHYSICIANS
AND DENTISTS (NAVAPD)

AT THE HEARING

BEFORE THE

COMMITTEE ON VETERANS AFFAIRS

OF THE

UNITED STATES SENATE

JULY 20, 1989

My name is Paul W. Schafer. Though I am employed full-time by the DVA as Chief of Thoracic Surgery at the Washington, D.C. VAMC, I speak here today in a strictly unofficial capacity as Executive Director of the National Association of VA Physicians and Dentists (NAVAPD), an organization with which I have been associated since its beginnings in the mid-70's. I was formerly Chief of Thoracic and Cardiovascular Surgery at the Walter Reed Army Medical Center where I trained a whole generation of the Army's surgeons who served with distinction in those specialities in Korea and Viet Nam. Prior to that I was Professor and Chairman of the Department of Surgery at the University of Kansas School of Medicine. My present academic appointment is Professor of Surgery (VA) Georgetown University. My government service, both military and civilian, and my private sector experience, academic and otherwise, have spanned the past half century. The last 25 years have been spent in service to the Veterans Medical Program. I present my credentials as a reference for a professional institutional memory not all that easy to come by in recent years as Administrators, their Deputies, and Chief Medical Directors have moved rapidly into and out of the System.

Mr. Chairman, we are appreciative of this opportunity to present our views concerning the two Bills which are the subject of this Hearing. On behalf of the NAVAPD Board of Directors it is my pleasure to report that our organization supports both of them.

In respect to S. , we agree with you that, though they are poorly defined, it would be difficult to challenge the almost certain benefits which result from preventive health-care and health-promotion activities.

We applaud your legislative initiative, S. 1211, which treats, as it should have been treated long ago, that infamous 1981 Christmas present we were given by then-Administrator Robert P. Nimmo who on December 28, 1981 promulgated his Order to reduce the Special

Pay of almost all VA physicians and dentists by $4,982 per year. This order, coming as it did on the heels of PL 96-330 and in the midst of the near crisis precipitated by PL 97-72, dealt such a serious blow to VA physicians' and dentists' morale that some residuals remain to this day. Absent a response to our appeals that this capricious and arbitrary action be reversed, our organization sought judicial relief. Though we were unsuccessful in the District Court and on appeal, with Nimmo gone from the scene, our litigation may have influenced then-Deputy Administrator Alvarez in his December 9, 1982 decision to restore $2,300/annum to our Special Incentive Pay, leaving the $2,682/annum residual reduction addressed in S. 1211. To date this has cost most VA physicians and dentists $21,468 in lost income.

As recognized in the background material accompanying S. 1211, this Bill treats only the tip of the iceberg that is the DVA's physician and dentist recruitment and retention problem. As in my testimony at the Budget Hearings last September, NAVAPD's call generally for:

1. Equality with our colleagues in the uniformed services.
2. Parity with our colleagues in academe.

and, 3. Comparability to a reasonable degree with our colleagues in private non-academic practice.

We have had a 27% decrease in our purchasing power since the last Special Pay increase provided by PL 96-330 back in 1980. The Nimmo Reduction treated by S. 1211 represents only 2% of this loss; and, were the entire 27% decrease restored right now, our real income would only be at the level recognized by the Congress as being needed to reverse the Agency's progressively deteriorating recruitment and retention ability almost 10 years ago.

A much stronger signal than this is needed now if the Department of Veterans Affairs is to be able to solve it present problems. It is that stronger signal which has to do with our foregoing call for equality, parity, and comparability. Absent a meaningful response to this call, there is reason to believe that veterans can kiss their medical care benefits goodbye and the Nation will then find that it has dishonored its contract with them. This must not be allowed to happen.

In spite of oft-repeated denials by its recent leaders; indeed, in the face of threats to those who would tell the truth, the Department's Medical Care Program is in such shambles that it can only be called a crisis. Aside from its obvious funding deficiencies, its marginal management, and its non-competitiveness in obtaining the services of hands-on health care providers and direct support personnel, there exists within the DVA Health Care Delivery System an unprecedented morale problem. Morale is at an all-time low.

The situation in regard to VA physicians and dentists has got to change if the Veterans Medical Program is to survive. Promising bright young men and women are not being attracted to service in the Program. Furthermore, unlike in years past, of those who do serve with us long enough to obtain their board certifications, almost none now opt to follow a career track within the Program. We have no new talent coming into the system. At the opposite extreme we see the certain prospect that many able, experienced senior physicians and dentists, eligible for retirement, will leave us as all of their Special Pay becomes part of their annuity benefit calculations after October 1, 1990.

The foregoing challenges to the Program's survival have long been recognized and should have been answered before now. However, the real prospect for calamity that awaits has here-to-fore been almost non-existent. This has to do with those whose ages range from the middle thirties to their late forties. These are the individuals who have chosen careers in service to veterans. They are the ones whom we have counted on to assume leadership roles replacing those who retire. The hazard we now face is that many in this group are now so disenchanted with prospects for the Veterans Medical Program and for themselves that they are beginning seriously to consider leaving to seek their fortunes elsewhere. They more than any others must be given a signal strong enough to convince them to stay. The principal component of that vitally needed signal is more money now.

It is our hope that the Department's Quadrennial Report due last December and now expected by the end of this month, will recommend such a signal.

United States
Office of Government Ethics
P.O. Box 14108
Washington, D.C. 20044

June 30, 1989

By Hand

The Honorable Alan Cranston
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510-6375

Dear Mr. Chairman:

I write to offer my comments on the proposed "Court of Veterans Appeals Judges Retirement Act" bill you forwarded to me. I understand that the bill is on a very fast track, so I have prepared these comments on an expedited basis. If there is a further opportunity for comment, I would be pleased to expand on these remarks.

Before commenting on the proposed legislation, I wish to renew my plea, for the reasons outlined in my June 8, 1989, letter to you, that 38 U. S. Code § 4053 be modified to provide for the traditional parity of salary at the circuit judge level for associate judges of the United States Court of Veterans Appeals.

As far as the proposed "Court of Veterans Appeals Judges Retirement Act" is concerned, I have reservations or comments about only three components of the bill: 1) the employment provisions for the Court (section 205); 2) the facilities for the Court (section 202); and 3) the need to provide for upward adjustment in calculations of retirement and survivor annuity pay (§ 4096).

Having consulted with the Office of Personnel Management ("OPM"), which in turn has been working closely with the Administrative Office of the United States Courts to help me develop a staffing plan for the Court, I have grave concerns about both the current and proposed provisions governing the employment of non-judicial personnel. (§ 4081 of the original legislation and section 205 of the proposed bill) For the reasons that follow, I urge that all of § 4081 following the first sentence be deleted. In that event, section 205 of the new legislation would be unnecessary, except that there would still be the need for a provision establishing the interim authority of the Chief Judge.

CON 132-84-0
March 1986

After considering the legislation and speaking with other courts' personnel and with OPM, I have concluded that the idea to impose the restrictions of title 5 of the United States Code, governing appointments in the competitive service, on any part of the Court's employing authority would eviscerate the Court's much-needed judicial independence and would reek havoc on the effective operation of the Court. OPM has informed me that the proposed grafting of the competitive service provisions and executive branch standards onto the Court's staffing needs would be problematic and difficult to achieve; there is simply no direct correlation between qualification standards within the executive branch and the judicial classification system - - a veritable "apples with oranges" mixture. Moreover, if the Court were to be saddled with the title 5 requirements, OPM most likely would propose that the Court be delegated examination authority to circumvent some of the difficulties of the competitive examination process. Under that scenario, the Court would be obliged to run its staffing under the training, auspices and oversight of OPM. Such a system would be costly, time-consuming, extremely burdensome, unnecessary and, most importantly, antithetical to the traditional notions of judicial independence.

Because the current law, §4081, and the proposed modification, section 205, both would render the Court subject to the control of the executive and the competitive service provisions of title 5, I must register my strong objection to subjecting the Court to treatment that would hamstring, if not cripple, its operations. I cannot think of a single virtue in having a judicial body bound by executive branch regulations and beholden to the executive branch. From my considerable judicial experience and from speaking with other courts' personnel, I am firmly convinced that unless all non-judicial personnel serve at the pleasure of the Court, it will be most difficult to operate the Court in an efficacious and efficient manner. As a judicial body, the Court needs flexibility - - not to be faced with procedural hurdle after hurdle when seeking to employ non-judicial personnel. While the proposed legislation would exempt the Court's first 35 employees from the title 5 requirements (if they were hired before December 31, 1989), that proposal does not go far enough and may even exacerbate the problem by creating two sets of employees: those who were hired outside the title 5 provisions and those who were hired subject to title 5.

I strenuously urge that § 4081 be modified so that only the first sentence of the current section remains: "The Court of Veterans Appeals may appoint such employees as may be necessary to execute the functions vested in the Court." Concomitant with the Court's authority, I recommend that the language of the Interim Authority provision, proposed section 205(d) be modified as follows and added to § 4081:

> The authority provided in this section may be exercised by the chief judge whenever there are not at least two associate judges of the Court.

My second area of concern about the proposed legislation is the requirement of section 202, entitled "Facilities for Court," that seems to require the Court to be housed in the Post Office Building adjacent to Union Station if the Administrator of the General Services Administration ("GSA") enters into a long-term lease arrangement for that space. While I understand that GSA will be commenting on section 202 of the proposed legislation, I offer my own comments on the provision. I have visited the Post Office Building in my quest to find suitable permanent quarters for the Court and have consulted with GSA about that and other locations. GSA has informed me that the Post Office Building is already totally occupied and that GSA has expended substantial sums of money to plan the space in that building.

Given the other purposes planned for the building, it appears that that location would be unsuitable for housing the Court. In any event, the ability to occupy the Post Office Building space would be years away. It is vital that the Court be housed in its permanent quarters no later than January 1, 1990, as the temporary space already arranged for the Court is makeshift at best. As a result, I recommend that section 202 be deleted from the bill. If the provision remains even though the Post Office Building space is already committed, I ask that the provision not be mandatory and instead be exercisable at the option of the Chief Judge so that my hands are not tied in starting the operations of the Court.

My third area of comment concerns Title I of the Act, the Judges Retirement and Survivor Annuity Program. In three of the sections of the bill, I feel that provisions need to be added providing for potential upward adjustments of retirement pay and survivor's annuity, similar to adjustment mechanisms in place for all other retirees and survivors. I recommend that § 4096 (c)(1) be amended by adding the following language at the end of the current provision: "subject to upward adjustment in the event of any increase in the rate of pay of the Chief Judge or the Associate Judges of the Court." For §§ 4096 (c)(2) and 4097(k)(1), I recommend that the calculations for benefits under those sections be subject to upward adjustment by inclusion of a Cost of Living Allowance. I feel that these modifications are necessary in order that the judges' benefits not be diminished by the effects of inflation.

I appreciate the opportunity to offer my observations on the proposed legislation. Please let me know if the Committee wishes me to expand on these remarks. If you or your staff members have any questions concerning these comments, please contact me or Melanie Dorsey of my legal staff at 523-5757.

Sincerely,

Frank Q. Nebeker/mso

Frank Q. Nebeker

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 12, 1989

Honorable Alan Cranston
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in reply to your Committee's request for the views of this Office on S. 1243, the "Court of Veterans Appeals Judges Retirement Act."

Title I of the bill would establish an optional, special retirement and survivor benefits plan for the seven judges of the new Court of Veterans Appeals. This system would be in lieu of the coverage available to the judges under the Federal Employees' Retirement System (FERS) or the Civil Service Retirement System (CSRS).

The special retirement plan proposed by Title I is patterned after the special systems established by law for judges of the U.S. Tax Court and for Bankruptcy Judges and Magistrates. There are, however, a number of technical defects which have been identified by the Departments of Labor and the Treasury, and by the Administrative Office of the United States Courts in letters to this Office. We are enclosing for Committee consideration excerpts from those letters which discuss changes needed to improve the special plan. We would also point out that Title I contains no provision for annuity benefits for former spouses of Court of Veterans Appeals judges. Such benefits are currently provided in the recently-enacted retirement system (Public Law 100-659) for Bankruptcy Judges and Magistrates, approved November 15, 1988, and in the military retirement system as well as FERS and CSRS. We believe the Committee should consider incorporating a provision for former spouses in Title I of the bill.

With respect to the cost of the new retirement system, for fiscal years 1990 to 1994, we estimate that there will be no budget outlays from the Court of Veterans Appeals Retirement Fund for annuity benefits. This assumes that none of the newly-appointed judges will retire during this time.

There could, however, be budget authority and intragovernmental outlays for the Court's retirement system beginning as early as FY 1990. Proposed Section 4098(e)(2)(A) of title 38, United States Code, would require the Court to transfer an amount to the Treasury sufficient to eliminate any unfunded liability of the Fund. Given that the Veterans Appeals Court judges' contribution under the bill would be only one percent of pay, and retirement annuities could equal full salary, the annual amount needed to eliminate the Fund's unfunded liability will depend on how many of the Veterans Appeals Court judges elect benefits under this bill. Since only one of the judges has been confirmed to date, any estimate of the cost at this time would be conjecture.

Section 201 of Title II would require the transfer of up to $3.1 million from other accounts of the Department of Veterans Affairs to the new Court. This provision has been overtaken by approval on June 30, 1989, of Public Law 101-45, making supplemental appropriations for the Department. That law provides $3.1 million for the Court. Accordingly, we recommend that section 201 of the bill be deleted.

Section 202 of Title II would direct the General Services Administration (GSA) to acquire space for the Court in the Old Post Office building adjacent to Union Station. Section 202 is contrary to GSA's basic statutory authority to assign space in government-owned or leased buildings. It also would undo ongoing and longstanding negotiations for use of the Old Post Office space for the Bureau of Labor Statistics. Section 202 is strongly opposed by GSA in its memorandum to this office (copy enclosed) and by the Department of Labor in the letter it is sending to your Committee. We concur in the views expressed by these agencies and, accordingly, recommend that section 202 be deleted or modified in a manner to meet the objections of GSA and the Department of Labor.

Other provisions of the bill address such matters as expedited hiring authority for the court, rules of procedure, and certain technical corrections in the laws establishing the Court and the Department.

Finally, we would have no objection to an increase in the salary of Associate Judges of the Court of Veterans Appeals, as suggested in Judge Nebeker's letter to you of June 9, 1989. Such an increase would place the new Court's salary structure on a par with other Federal appeals courts.

Subject to the deletion of Section 201 and the deletion or acceptable modification of Section 202, and to the Committee's consideration of technical comments on the retirement plan, the Administration would support the enactment of S. 1243.

Cordially,

William M. Diefenderfer III
Deputy Director

Enclosures

Department of Labor Technical Comments on H.R. 2727 and S. 1243

The bill raises certain technical questions. Under the bill, a judge who elects to participate in the proposed Court of Veterans Appeals retirement plan would be "cashed-out" of the civil service retirement system and paid a lump-sum calculated under 5 U.S.C. 8331(8). It is not clear how this would affect those who participate in the Federal Employees' Retirement System Act of 1986 (FERSA) Thrift Savings Plan (TSP). It is also unclear how this provision for lump sum payment of civil service retirement benefits would affect the spousal protection provisions of FERSA (5 U.S.C. 8435). In general, it may be helpful to define two terms used in the bill. One is "retired pay" which has a specific meaning within the military retirement system and the other is "civil service retirement." It is not clear which civil service retirement systems are meant to be included in the bill.

Department of the Treasury Technical Comments on H.R. 2727 and S. 1243

The investment language in proposed section 4098(f) fails to conform to longstanding Treasury investment policy. That section should be amended to read as follows:

> "At the request of the chief judge, the Secretary of the Treasury shall invest excess monies in the fund in public debt securities with maturities suitable to the needs of the fund, as determined by the chief judge, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligation of the United States of comparable maturities."

In view of the foregoing, the Department opposes proposed section 4098 (f) in the bill.

July 6, 1989

MEMORANDUM FOR LEGISLATIVE REFERENCE DIVISION
OFFICE OF MANAGEMENT AND BUDGET

FROM: AL VICCHIOLLA
CHIEF LEGISLATIVE COUNSEL
GENERAL SERVICES ADMINISTRATION

SUBJECT: Section 202 of the "Court of Veterans Appeals Judges Retirement Act"

The General Services Administration (GSA) has reviewed section 202 of the bill. With the exception of section 202, GSA has no comment on this draft legislation, which would amend title 38 of the United States Code to establish a retirement and benefit program for the judges of the United States Court of Veterans Affairs. GSA does, however, strongly oppose section 202 of this bill, which would require the Administrator of General Services (Administrator) to provide approximately 30,000 square feet of space on the first floor of the City Post Office adjacent to Union Station in the District of Columbia for use by the Court of Veterans Affairs. Specifically, GSA opposes the provision for the following reasons:

1. First, section 202 of this bill is contrary to section 210(e) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(e)), which statutorily authorizes the Administrator, following consultation with the heads of affected executive agencies, to assign and reassign space of all executive agencies in Government-owned and leased buildings both in and outside the District of Columbia. Section 210(e) further provides that the Administrator may make such an assignment orreassignment once he has made a determination that it would be advantageous to the Government in terms of economy, efficiency, or national security. Therefore, GSA views section 202 as inappropriate since, in effect, it grants an arm of the judicial branch the ability to dictate to an executive agency how that executive agency will perform its statutory duty regarding the assignment of space.

2. Second, section 202 would defeat ongoing negotiations for a lease that GSA has been conducting with the United States Postal Service (USPS), on behalf of the Bureau of Labor Statistics (BLS) and the Architect of the Capitol (AOC). The space needs of these two entities are such that both can barely be accommodated in the

building. While GSA is reasonably confident that we can consolidate BLS as well as house the Congressional Offices designated by the AOC in the City Post Office, we are certain that there is no leased space available for any other function. Thus, GSA cannot accommodate even marginal uses, much less a 30,000 square foot requirement plus unspecified expansion space.

3. Finally, GSA notes that the provision authorizing additional space for the United States Veterans Court adjacent to the 30,000 square "under such terms and conditions" and "with proper notice" is inconsistent with GSA leasing practices. Specifically, GSA does not provide space to tenant agencies under terms that permit GSA to terminate previous agreements at any time. Therefore, even if the more serious problems raised in the first and second point did not exist, this latter provision for additional space would have no practical effect, since there never would be a time when both the requisite "terms and conditions" and "proper notice" were met.

4. Finally, GSA opposes section 202 because GSA believes that the long term space needs of the Court of Veterans Appeals can be achieved without use of special legislation. Rather, the Court's long term space needs can and should be accomplished by means of the GSA competitive lease process.

In conclusion, GSA strongly opposes section 202 of this bill for the reasons cited in this memorandum.

SUBJECT: Draft Bill – Court of Veterans Appeals Judges Retirement Act

The Administrative Office has reviewed the bill transmitted to us by your office. Although we do not have jurisdiction over this court, we are offering what we hope are helpful comments comparing this new system with the systems already in existence for other judges.

I have attached an in-depth comparison done by our General Counsel's office. There are some main points we think should be considered in further drafting:

o It is unclear whether the bill contains a COLA for the basic annuity.

o There appears to be no provision for recalling judges to service.

o The surviving spouse provisions appear harsher than in other systems – the spouse must have been married for two years in order to receive an annuity and if there are no dependent children, the spouse does not receive an annuity until age 50. In addition, the judge would have had to have five years of service, instead of the usual 18 months, in order for the spouse to qualify for an annuity.

o Generally, it is up to the agency to run their retirement system and it works well that way.

o § 4097(d) indicates that the chief judge can set the conditions for installment payments. This could differ from judge to judge. It would be better to have one system set up for eveyone. Also specific amounts should be required.

o You may want to add to § 4097(f)(3) that the annuity would also be terminated upon reaching age 18 or 22 if a student.

SUBJECT: **Retirement Bill for Judges of Court of Veterans Appeals**

Set forth below is a brief outline comparing the draft retirement bill for judges of the Court of Veterans Appeals with retirement provisions applicable to bankruptcy judges and magistrates.

The draft bill would establish a new subchapter V in chapter 72 of title 38 of the United States Code, entitled "Retirement and Survivors Annuities." Although the statement of Senator Cranston regarding the Senate version of the bill indicates that the proposed retirement system is modeled after the retirement system for judges of the United States Tax Court, it also would be very similar to the new retirement system for bankruptcy judges and magistrates set forth at 28 U.S.C. § 377. In addition, the draft bill would establish a program of survivor annuities for judges of the Court of Veterans Appeals that would be very similar to the Judicial Survivors' Annuities System, set forth at 28 U.S.C. § 376. Although JSAS was established as a program for the survivors of Article III judges, the retirement statute for bankruptcy judges and magistrates allows those officials to participate in JSAS as well.

1. BASIC RETIREMENT PROVISIONS

- In the case of both Veterans Appeals judges and bankruptcy judges and magistrates, the annuity equals the salary at the time of retirement. The basic age and service requirements for retirement under title 38, chapter 72, subchapter V, would be the same as for Article III judges, i.e., age 65 with 15 years of service, age 66 with 14 years, etc., up to age 70 with 10 years of service. A bankruptcy judge or magistrate may retire at age 65 after 14 years of service. In addition, a bankruptcy judge or magistrate with at least 8 but less than 14 years of service may retire and receive, at age 65, an annuity equal to that portion of the salary being received at the time the judge or magistrate leaves office which the number of years of service, not to exceed 14, bears to 14. The annuity is reduced by 1/6 of one percent for each full month the judge or magistrate was under 65 at the time of leaving office, but the maximum reduction is 20 percent.

- Both the bill and the retirement system for bankruptcy judges and magistrates contain provisions for retirement upon failure of reappointment. Judges of the Court of Veterans Appeals are appointed for a term of 15 years. A judge who is not reappointed after serving at least one full term may retire and receive an annuity upon completion of that term, regardless of age. A bankruptcy judge or magistrate who is not reappointed after completion of at least one full term of office (14 years in the case of a bankruptcy judge, 8 years in the case of a magistrate) receives an annuity equal to the portion of the salary received at the time the judge or magistrate leaves office which the number of years of service (not to exceed 14) bears to 14. A bankruptcy judge or magistrate who retires under this provision does not receive an annuity until the age of 65.

- A Veterans Appeals judge who became permanently disabled would be permitted to retire and receive the salary in effect at the time of retirement if the judge had served for at least ten years. A disabled judge who served for less than ten years would receive one-half of the pay in effect at the time of retirement. These provisions are comparable to the provisions for Article III judges who become disabled. A bankruptcy judge or magistrate who becomes disabled after serving at least five years but less than 10 may retire and receive an annuity equal to 40 percent of salary at the time of retirement. A bankruptcy judge or magistrate who has served for at least 10 years receives an annuity equal to the proportion of the salary being received at the time of retirement which the number of years of service, not to exceed 14, bears to 14.

- The draft bill does not appear to contain any provision for cost-of-living increases in the basic annuity for judges of the Court of Veterans Appeals. A bankruptcy judge or magistrate is entitled to the same COLAs as Civil Service Retirement System annuitants.

- Judges of the Court of Veterans Appeals would be under the Civil Service Retirement System or the Federal Employees' Retirement System, as appropriate, unless they affirmatively elected the new retirement system. Similarly, bankruptcy judges and magistrates are under CSRS or FERS unless they elect 28 U.S.C. § 377. A Veterans Appeals judge would be permitted to make an election at any time before leaving office (except that a judge who is not reappointed would be permitted to make an election at any time before the day after the day on which a successor takes office). 28 U.S.C. § 377 contains no time limit for election of that system. A Veterans Appeals judge would be permitted to revoke an election prior to retirement. There is no provision for revocation of an election by a bankruptcy judge or magistrate.

- A Veterans Appeals judge who elected chapter 72, subchapter V, would no longer be eligible for a CSRS or FERS annuity and would receive a lump-sum refund of contributions to CSRS or FERS. Similar provisions apply to bankruptcy judges and magistrates who elect section 377.

- Veterans Appeals judges would contribute one percent of salary to the retirement plan. Sufficient withholdings and/or deposits must be made to cover 15 years of service. Bankruptcy judges and magistrates also contribute one percent of salary to the section 377 retirement system, but withholdings and deposits need only cover 14 years of service. A Veterans Appeals judge who revoked election of chapter 72, subchapter V, would be entitled to a refund of contributions, along with three percent interest; however, if the judge desired CSRS or FERS credit for that period of service, a deposit would have to be made, with interest. As previously indicated, judges and magistrates may not revoke election of section 377.

- Bankruptcy judges and magistrates may not practice law after retirement without forfeiting their COLAs and the opportunity to be recalled. No such provision appears in the Veterans Appeals bill, but I also cannot find any provision for COLAs or recall.

2. SURVIVOR ANNUITIES

- The draft bill contains a system of survivor annuities very similar to JSAS. Like bankruptcy judges and magistrates, Veterans Appeals judges would be permitted to elect the system. The bill would permit a Veterans Appeals judge to make such an election at any time while in office. In contrast, bankruptcy judges and magistrates must elect JSAS within six months after (i) the date of taking office, (ii) the date of marriage, or (iii) November 15, 1988, the date of enactment of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988. Article III judges must elect JSAS within six months of the date of taking office or the date of marriage.

- A Veterans Appeals judge would contribute 3.5 percent of pay, including retirement pay, to the survivor annuities system. The JSAS contribution is 5 percent of pay, including retirement pay. In both cases, a deposit generally must be made to cover prior Federal service; if no deposit is made, either the annuity is reduced or the prior service is disregarded in computing the annuity.

- A surviving spouse of a Veterans Appeals judge would receive an annuity only if married to the judge for at least two years at the time of the judge's death, or a parent of children by the marriage. A surviving spouse of a judge or other official under JSAS need only have been married to the deceased individual for one year, or be a parent of children by the marriage. Children entitled to an annuity would be defined in the same manner as under JSAS.

- The surviving spouse of a Veterans Appeals judge with no dependent children would not receive an annuity until the age of 50, if under that age when the judge dies; a surviving spouse with dependent children would receive an immediate annuity. Under JSAS, a surviving spouse receives an immediate annuity, regardless of age or the existence of dependent children. In the case of both programs, the surviving spouse's annuity terminates upon death or remarriage before age 55.

- A Veterans Appeals judge would be required to have at least five years of service in order for survivors to receive an annuity. Under JSAS, only 18 months of service are necessary to entitle survivors to an annuity.

- The significant provisions of the draft bill regarding calculation of annuities, what constitutes creditable service, and deposits for creditable service are substantially the same as the corresponding provisions of JSAS, except that the annuities payable in cases where there are surviving children but no surviving spouse would in some instances be smaller under JSAS than under the draft bill. In addition, JSAS annuitants, like CSRS retirees, receive COLAs equal to increases in the Consumer Price Index. Survivors of Veterans Appeals judges generally would receive COLAs equal to three-fifths of any increase in the salary of a judge.

- A Veterans Appeals judge who left office without entitlement to an annuity or who ceased to be married would be permitted to revoke election of the survivor annuities system and receive a refund of contributions, with interest. Under JSAS, an individual who leaves office without entitlement to an annuity receives a refund of contributions. However, the JSAS statute does not permit revocation of an election of JSAS on the ground that an individual is no longer married.

The draft bill contains provisions that relate to matters other than retirement, including funding, facilities, and hiring of employees for the Court of Veterans Appeals. The present memorandum does not comment on those provisions.

JUNE 1989

TESTIMONY OF HELLEN GELBAND, SENIOR ASSOCIATE
OFFICE OF TECHNOLOGY ASSESSMENT
U.S. CONGRESS
SUBMITTED TO THE UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS
June 22, 1989

CURRENT STATUS OF ONGOING STUDIES RELATING TO THE EFFECTS OF EXPOSURE TO AGENT ORANGE

Two major government-funded studies of Vietnam veterans' health are still ongoing: the Air Force Health Study (the Ranch Hand Study) and the Centers for Disease Control's (CDC) Selected Cancer Study, the final study under the mandates of PL 96-151 and PL 72-72. For this hearing, OTA was asked to comment on the current status of these two studies as they bear on the question of possible effects of exposure to Agent Orange.

Ranch Hand Study

The approximately 1,200 participants in Operation Ranch Hand, the Air Force fixed wing aircraft program responsible for most Agent Orange spraying, form the largest identifiable group of veterans known to have had significant exposure to the herbicide. The Air Force has been studying these men and a group of "controls," matched by military occupation and other pertinent characteristics, since 1982, when they conducted their first analysis of Ranch Hand deaths since the war and the first in a series of interviews and physical examinations. Since then, the analysis of causes of death has been updated periodically, the most recent report appearing in April 1989, based on the 74 Ranch Hand deaths that have occurred. Analyses of physical examinations conducted in 1982 and 1985 have been released, and analysis of a 1987 examination is, according to the Air Force, progressing on schedule for release in the first quarter of 1990. Future physical examinations are scheduled for 1992, 1997, and finally, 2002. An additional report, a complete analysis of birth outcomes based on birth certificates and medical records, is nearly complete and should be released in early 1990, according to the Air Force.

Since the beginning of the study, the investigators have assumed that Agent Orange exposure was not uniform among all Ranch Hands, whose jobs ranged from largely administrative to flying planes to cleaning out the herbicide tanks on planes. If Agent Orange were causing health problems, they would be expected to be most pronounced among groups with higher exposures. The investigators, therefore, as well as comparing Ranch Handers with the control group, looked for possible relationships of health effects within the Ranch Hand cohort, by probable exposure categories based on the reported jobs of the participants. This is an approach commonly taken in occupational epidemiology when no quantitative measures of exposure exist.

Now there is a quantitative indicator of past exposure to Agent Orange: the dioxin blood assay, which was used by CDC in its 1987 "validation study." Over the past year, blood from Ranch Hand Study participants was drawn and forwarded to CDC for analysis, which has almost been completed. When all the data are in, the Air Force plans to reanalyze the 1987 examination data using these blood dioxin levels (and levels extrapolated back to Vietnam service), which should give a more precise estimate of the relationship of health effects and exposure than has been possible previously. The analyses should be finished in 1991.

Because of the relatively small number of Ranch Handers, and the fact that they are generally middle-aged and healthy, relatively few (epidemiologically speaking) instances of serious disease and few deaths have occurred. The strength of this study is in assessing the possible effects of Agent Orange on diseases that occur more commonly, and also on more subtle, subclinical conditions that may be detected in the extensive laboratory testing that has been part of the study.

Currently and for the next few years at least, it will be impossible to draw any conclusions from the Ranch Hand Study about Agent Orange and cancer, unless there is a dramatic increase in cancers over what has been seen so far. The evidence to date does not suggest an excess of cancers, but the number of cases is too small to rule out a small or moderate increase.

For technical review of the Ranch Hand Study, the Air Force has depended on the "Ranch Hand Advisory Committee" (formally, the Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants) which has been under the aegis of the Department of Health and Human Services and has, in the past, been chaired by a government scientist, with all other members coming from the private sector. This group must be reconstituted since the change in administration, with a different composition than previously, as mandated by PL 100-687, which requires that the chairperson also come from outside the Federal Government, and that at least one-third of the members be nominated for appointment by the veteran community. DHHS has not completed the process of reconstitution, which, if it is not to delay release of the 1987 examination analyses, must occur relatively soon.

JUNE 1989

Selected Cancers Study

The Selected Cancers Study is one of three studies originally proposed by CDC to fulfill the mandate of PL 96-151 and 97-72. The other two are the Vietnam Experience Study (VES), completed in 1988, and the Agent Orange Study, which proved infeasible. Because cancers are relatively rare in middle age, the predominant age group of Vietnam veterans, CDC sought to test hypotheses related to Vietnam service and certain specific cancers in a case-control study, which is a more efficient means of studying rare diseases than is the cohort approach of the VES. Like the VES, however, the "exposure" is to what has been called the "Vietnam experience," since it is not possible to make individual estimates of exposure to Agent Orange, and blood sampling was not part of this study (it is uncertain whether blood dioxin determinations in people who already have cancer would be valid, in any case).

If the Selected Cancers Study reveals that having served in Vietnam puts men at a higher risk for developing the cancers under study--soft tissue sarcoma, lymphoma (including Hodgkin's Disease and non-Hodgkin's lymphomas), nasal and nasopharyngeal cancers, and primary liver cancer--it will be impossible to know whether Agent Orange might be the cause. In the case of primary liver cancer and nasal and nasopharyngeal cancers, in fact, other causes would be more likely suspects. It is known for certain that hepatitis B infection is responsible for most primary liver cancer around the world. This cancer is relatively rare in the United States, but it is the most prevalent cancer in Asia, where the virus is endemic. In the Selected Cancers Study, no evidence of past or present hepatitis B infection is available for cases or controls, so infection with it cannot be evaluated as a risk factor.

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The VES did assess hepatitis B, however, and reported that Vietnam veterans had a significantly higher prevalence (14.1%) of past exposure than did non-Vietnam veterans (11.1%).

The idea that some nasopharyngeal cancers may have a viral etiology has been suggested by the worldwide distribution of these cancers and other evidence. The Selected Cancers Study will not have the information to assess this possibility.

The power of the Selected Cancers Study to detect an association with Vietnam service is very good for soft tissue sarcoma and lymphoma, and somewhat less but still good, for primary liver cancer and nasal and nasopharyngeal cancers. This good power is based on an assumption that all veterans were exposed to the particular aspect of the Vietnam experience that might be important in causing cancer. If a cancer-causing element of the Vietnam experience were less than ubiquitous, however, the power of the study would be diluted accordingly. It is worth emphasizing, though, that the power of the study is best for soft tissue sarcomas and lymphomas, the cancers included because of their possible links with phenoxy herbicides.

According to CDC, the full report of the Selected Cancers Study is scheduled for release in June 1990, with an interim report on the first 75 percent of the non-Hodgkin's lymphomas this December. Some initial difficulties stemming from the many AIDS-related lymphomas among the cases have apparently been resolved to the investigators' satisfaction.

Other Studies

The Department of Veterans' Affairs continuing mortality study will, over the course of time, provide additional information on which to judge the overall health of the Vietnam veteran cohort. Ongoing studies by the National Institute of Occupational Safety and Health of phenoxy herbicide workers will add to the body of evidence concerning the long-term effects of occupational exposure to these chemicals, which might have relevance for veterans with significant exposure, such as Ranch Hands and possibly chemical corps workers.

PVA

PARALYZED VETERANS
OF AMERICA
Chartered by the Congress
of the United States

June 30, 1989

Honorable Alan Cranston, Chairman
Senate Committee on Veterans' Affairs
SR-414 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Cranston:

On behalf of the members of Paralyzed Veterans of America (PVA), it is a pleasure to respond regarding the proposed "Court of Veterans Appeals Judges Retirement Act." PVA appreciates the efforts of both you and Chairman Montgomery and the Ranking Members of your Committees in developing and introducing this necessary legislation. PVA takes pride in our role in securing enactment of the legislation establishing the Court of Veterans Appeals during the 100th Congress and we have been closely following the implementation of the Court.

PVA believes the proposed retirement program is both necessary and appropriate. Your legislation follows established programs currently providing benefits to other judicial entities which have proven to be both attractive and consistent with existing personnel practices. This retirement program provides security for participants while serving on the Court and affords retirees adequate post employment compensation.

PVA supports the other provisions of the legislation, as well, recognizing the need for establishing some guidance for the initial operations of the Court and addressing certain omissions or oversights contained in the original legislation. We are pleased to note the recent action by Congress in passing the Fiscal Year 1989 Dire Emergency Supplemental Appropriation which contains funding for the Court and negates the need for the borrowing authority proposed by the bill. Additionally, we recognize and support the provision which allows the Court the necessary flexibility to expedite the hiring of requisite staff.

While PVA endorses the proposed legislation, it should be noted in passing that representatives of the Veterans' Service Organizations, the American Bar Association, the Federal Bar Association, and the District of Columbia Bar Association have

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come together as an informal advisory group to review the Federal Rules of Appellate Procedure (FRAP). This action has been taken with the endorsement of the Chief Judge. The task of this group is to bring to the Court's attention those FRAP rules which may require modification to reflect the unique role of the Court. We understand that the Judge intends to appoint a formal advisory committee on rules upon the selection and confirmation of additional judges.

PVA does have some concern relating to the effect and possible misunderstanding of two of the proposed technical amendments. First, PVA is concerned that the amendment proposed in Sec. 302(b), which would remove the words "statute or" from 38 U.S.C. Sec. 4092, may be interpreted as having far greater effect than intended. Our understanding is that the intent of the amendment is merely to clarify that Congress did not intend to provide the Court of Appeals for the Federal Circuit with authority to hold unlawful and set aside statutes on grounds which are not generally available to other federal courts, i.e., as "arbitrary and capricious." We are further under the impression that Congress does intend the Court to have the power to set aside statutes in proceedings under 38 U.S.C. Sec. 4092 in accordance with accepted standards for determining the validity of statutes. PVA does not object to the intended change, as understood. However, PVA believes there is a possibility that the change will be misinterpreted. Given that the statute specifically sets forth the Court's power to hold unlawful and set aside regulations, the failure to also so specify as to statutes could be interpreted as an indication that the Court would be constrained from doing so in these proceedings. Such an interpretation is especially likely where, as here, the provision originally referred to statutes, but the reference was later stricken.

A further problem which may not have been considered is the effect of the provision on interpretations of statutes. Such interpretations should be reviewable under the standards set forth in 38 U.S.C. Sec. 4092(d)(1) and the proposed change may be interpreted to prevent such review. We urge the Committee to include language in the bill or the accompanying Report which would clarify the drafter's intentions in order to avoid misinterpretations such as those discussed herein.

Second, Section 301 would delay the effective date of the new provisions for reopening of Board of Veterans Appeals disallowed cases. PVA believes that this change will cause inconvenience or even hardship for veterans and other claimants who have chosen to take advantage of the new provisions since January 1, 1989, when they become effective. Returning to the reopening standards in existence prior to January 1, 1989 will constrict the grounds for such reopening. This would result in invalidation of reopenings which have already been filed which would fall within the new standard, but outside of the prior standard. It is not clear whether such requests could be refiled after September 1, 1989, under the proposed amendment without prejudice to the claimant's rights. If refiling is available, the proposed change would not result in a permanent loss of rights. Even under those circumstances, however, the necessity for repeating the process would be an unwarranted inconvenience upon claimants.

Again, Paralyzed Veterans of America supports the proposed "Court of Veterans Appeals Judges Retirement Act" and appreciates your continued attention to the needs of veterans and the proper implementation of the Court.

Sincerely,

R. Jack Powell
Executive Director

PVA

PARALYZED VETERANS
OF AMERICA
Chartered by the Congress
of the United States

July 5, 1989

The Honorable Alan Cranston
Chairman
Senate Committee on Veterans' Affairs
SR-414 Russell Senate Office Building
Washington, D.C. 20510

Attention: Mr. William E. Brew

Dear Mr. Chairman:

This is in response to your letter of June 23, 1989, concerning the 13 additional bills that have not been the subject of prior Committee hearings. Thank you for soliciting our views on these bills.

S. 505, introduced by Senator Stevens, provides that remarriage of the surviving spouse of a veteran after age fifty-five will not result in the termination of Dependency and Indemnity Compensation (DIC). Although we agree with the principal of this legislation and do not oppose its intent, PVA believes any new legislation directed at the survivors of service-disabled veterans should be expressed in the form of (1) a restructured DIC formula to reflect entitlement based on the veteran's degree of disability rather than military pay grade, (2) increased face values available under the Veterans' Mortgage Life Insurance (VMLI) to reflect the enormous increases in housing costs over the past thirteen years, and (3) increased face values available under the Service Disabled Veterans' Insurance (SDVI) RH program.

In the absence of these three provisions, which we strongly believe to be priority issues for the survivors of service-disabled veterans, we endorse Senator Stevens' bill. If limited funding proves to be the principal consideration behind such legislation, we encourage the Committee to consider the relative merits of S. 505 and the three initiatives we have suggested. As we have discussed with your staff, improvements in the VMLI and RH programs would benefit the survivors of severely disabled service-connected veterans while, at the same time, require relatively low government subsidies due to the fact that veterans are contributing to the programs through premiums on their policies.

PVA continues to oppose legislation, S. 613, which would index rates of disability compensation and DIC to the Consumer Price Index (CPI). As

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we stated in our written testimony on June 9, 1989, we believe the authority to make adjustments in the cost-of-living for these benefits properly belongs to your Committee and the House Committee on Veterans' Affairs.

There are many special factors that affect the financial needs of a disabled veteran that go well beyond the formula upon which the CPI is based. This is especially true of severely disabled veterans whose loss of earning power is only part of the total equation. Your Committee understands how changing economic climates, diminished medical services, deficit reduction initiatives, and decreased benefit delivery services affect a disabled individual both directly and indirectly. The CPI, obviously, does not understand such interactions. PVA strongly opposes S. 613.

S. 1110, another DVA bill introduced by request, requires mandatory disclosures of social security numbers in claims for disability and death benefits. The provision specifically states that this requirement be a condition precedent to receipt or continued receipt of such benefits. It also requires the social security number of any dependent or beneficiary on whose behalf, or based upon whom, such person applies for or is in receipt of any such benefits.

We strongly oppose language that requires social security numbers in order to receive or continue to receive benefits. A veteran's entitlement to disability compensation, for example, should never be held hostage to the receipt of such information. We have no objection to the Department's practice of requesting social security numbers.

Senator Graham has introduced legislation, S. 1141, which sets aside an appropriate area within the Arlington National Cemetery for the unmarked burial of cremated remains. As we recently stated before the House Subcommittee on Housing and Memorial Affairs concerning similar legislation, we support this initiative but believe the bill would be greatly enhanced by the addition of several amendments. First, we recommend that a veteran's cremated remains be placed in a proper uniform container, thus preserving individual dignity and recognition. In addition, we believe the designated site for these burials should include the prominent placement of an appropriate "honor roll" registry which identifies those individuals who are laid to rest there. PVA suggests that all DVA National Cemeteries provide similar areas for cremated remains.

Senator Matsunaga has introduced S. 1146, a bill to provide direct DVA housing loans to eligible native American veterans for the purchase of housing on certain trust lands and certain communally owned lands. PVA supports the concept of direct loans, especially in the case of a native American veteran whose prospective house stands on non-transferable tribal land. We believe that if such direct loans were implemented, and underwriting standards were adjusted to reflect the economic conditicns which plague Indian communities, the provisions in S. 1146 concerning joint DVA\tribal housing loans and Federal guaranties for housing loans made by tribal organizations would be unnecessary.

PVA supports S. 1147 which authorizes a headstone allowance for prepurchased grave markers and Senator DeConcini's bill which provides certain administrative authority and requirements regarding the Arizona Veterans Memorial Cemetery.

S. 860 - "To amend title 38, United States Code, to ensure adequate analysis of budgetary needs of the Department of Veterans Affairs for veterans health care programs."

Paralyzed Veterans of America supports this provision, introduced by Senator Daschle, which would provide a mechanism to monitor the exact budgetary needs of the veterans health care system through a series of reports submitted by the Secretary of Veterans Affairs to the President, the Congress and the General Accounting Office (GAO).

The current fiscal crisis facing the Department of Veterans Affairs is a reflection of the budget strain placed on all federal programs. At the same time, as we have seen in the instance of the FY 1989 budget proposal and supporting statements, the massive shortfall was a result of unrealistic and deceptively muffled initial accounts on the part of the Administration of what the VA's anticipated patient demand and needs actually were going to be this year. Congress is hard-pressed to provide needed adjustments in DVA funding when either the Secretary or the Chief Medical Director are not allowed by the Office of Management and Budget to state clearly what their anticipated demands will be in the coming year. The result not only cripples the Department that year, but the eroded budget baseline must be transposed to the next year, compounding the shortfall year after year.

For the past three years Paralyzed Veterans of America has worked with three other national veterans service organizations to develop an "Independent Budget For Veterans Programs." This document, recognized by the Congress for its accuracy, provides a realistic assessment of both demand and the dollars needed to meet that demand. Information required to draft the "Independent Budget" has been obtained from the Department either openly or, when data was difficult to acquire, under the Freedom of Information Act. We are very pleased that preliminary discussions with Secretary Derwinski have revealed his willingness to have the Department cooperate completely with our requests for information as we proceed to develop the "Independent Budget" for FY 1991.

At the same time, we believe Congress should also receive from the Secretary a clear and concise analysis of DVA budget needs that can be transmitted without the bias of arbitrary OMB policy or decision making. The legislation would require the Secretary to submit a statement of assessment as to the adequacy of the amount requested in the Department's annual budget request to the President.

Likewise, the Secretary would be required to submit a similar report to the House and Senate Committees on Veterans' Affairs and the GAO accompanying the Administration's formal budget request each year. The GAO would be required to comment and assess the accuracy of the Secretary's statement in a report submitted to the House and Senate

Committee's on Veterans' Affairs not later than 30 days after receiving the Secretary's views.

In supporting S. 860, PVA would like to suggest that the legislation be amended to require that, in each instance, the Secretary's reports be accompanied by a corroborative statement of agreement from the Chief Medical Director of the Veterans Health Services and Research Administration.

S. 1145 - "To reestablish the Advisory Committee on Native-American Veterans."

Paralyzed Veterans of America supports the concept behind this legislation introduced by Senator Matsunaga. The Committee on Native-American Veterans has provided a valuable service acting as a watchdog for the needs and special interests of this unique veteran population. We believe that re-establishment of the committee is warranted, but would leave the actual design, composition and structure of the committee up to the deliberation of the Congress.

S. --- A draft bill, "To extend the preventive health-care pilot program of the Department of Veterans Affairs."

This draft legislation proposed by Senator Cranston would extend the current preventive health care services pilot program which is intended to promote preventive care within the VA medical system as a cost effective alternative to chronic, long term illness within the veteran population. PVA, believes that, while limited in scope, the pilot program goes a long way in stressing both the need for, and the awareness of, medical monitoring and counseling services to promote "health" as a major additional weapon to combat illness and disease.

S. 1211 - "To require the Secretary of Veterans Affairs to pay the maximum amount of special pay authorized for Department of Veterans Affairs physicians and dentists"

This legislation would re-open and confirm the authority provided the Secretary of Veterans Affairs to provide maximum amounts of special pay and incentive pay to DVA physicians and dentists. The Department must have every tool available to recruit and retain quality health care professionals, particularly as competition with the private sector continues to intensify. The DVA itself is facing major losses in the ranks of its physicians due to age and retirement in the not too distant future. PVA believes this legislation to be a modest, but important, step in the right direction to help solve this growing problem.

S. 1195 "To delete the requirement that settlements of claims in excess of $1,000,000 on a construction contract be provided for specifically in an appropriation law."

PVA does not believe that current law, requiring the DVA to request, and the Congress to appropriate, specific funds to settle claims on construction contracts in excess of $1,000,000, should be changed or modified. The existing system, in our opinion, provides significant incentive for the agency to conduct proper planning and supervision for its major construction projects to ensure that cost overruns and settlements on claims of this size are avoided or at least kept to a minimum. The current process which calls for specific appropriations to settle claims in excess of $1 million undoubtedly can be cumbersome we realize. But at the same time, this procedure ensures that the Congress will be able to provide adequate oversight over the operation of DVA construction programs and the expenditure of major blocks of tax dollars.

Sincerely,

Gordon H. Mansfield
Associate Executive Director
for Government Relations

PVA

PARALYZED VETERANS
OF AMERICA
Chartered by the Congress
of the United States

July 13, 1989

The Hon. Alan Cranston, Chairman
Senate Committee on Veterans' Affairs
SR 414 Russell Senate Office Building
Washington D.C. 20510

Dear Mr. Chairman;

In response to your letter of June 30, 1989, Paralyzed Veterans of America is pleased to express its support for certain provisions of S. 1188, introduced by Senator Murkowski, that would allow the Department of Veterans Affairs (DVA) to verify the amount of veterans' non service-connected disability pension benefits and certain other income-based veterans' benefits by justifying self-reported income data with those amounts reported by an individual for tax and social security purposes.

A March 1988 study of the VA pension program concluded that out of a total of 1.4 million pension recipients, 549,000, or more than one-third - had $947 million more income on tax records than was recorded on the Department's records obtained separately from individual veterans. The GAO concluded that, disregarding discrepancies of less than $100, the DVA was unable to identify $157.2 million in potential pension overpayments because it lacked the access to tax data now available to other agencies administering needs based benefit programs.

The legislation would give the Department access to wage and income information already collected from third parties by the Treasury Department, Social Security Administration and other federal agencies administering income based benefits and programs. The DVA would also be able to use this information to verify eligibility for non service-connected veterans' disability and survivors' pensions, certain dependency and indemnity compensation paid to parents of individuals who die on active duty or due to a service-connected cause, and veterans with service-connected disabilities rated less than 100 percent but who are paid at the 100 percent rate because of unemployability.

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Noting the size of the federal budget deficit and the limited supply of federal dollars to support all on-going veterans' benefits and services, PVA believes these provisions will strengthen the Department's efforts to maintain the integrity of VA benefits and avoid any potential or continuing abuses in its low income assistance programs. We, however, caution the Committee to underscore and monitor those provisions of the bill which protect the privacy of the individual veteran and the confidentiality of the data that would be obtained and used by the Department.

We believe it to be essential that the VA clearly notify benefit recipients that income verification will be taking place, and, if discrepancies are found, work closely with individual veterans to avoid undue harassment in cases where simple errors or mistakes can be separated from intentional fraud or clear income misrepresentation. Those veterans affected by these programs, because of serious and catastrophic disabilities, can be ranked in the lowest income categories in the Nation. If overpayments are discovered, we urge the Committee to make certain that, as with cases of overpayment in other VA programs, the Department make every effort to seek a reasonable schedule of repayment prior to outright prosecution that will satisfy both the government and maintain adequate on-going benefit assistance and support for the individual veteran.

In closing, Mr. Chairman, the legislation also contains a provision that would grant the authority for the Department to verify self-reported income data with tax records, as well, for the purpose of determining veterans' health care eligibility under the means test. Paralyzed Veterans of America believes that, while it may be proper to pursue the verification process in the context of a monthly cash income supplement provided for a veteran, to engage in such a lengthy and potentially expensive process to govern immediate access to medical services for every veteran seeking health care in VA facilities is unwarranted. We do not support enactment of this provision of the legislation.

Thank you for giving us the opportunity to express our views.

Sincerely yours,

Gordon Mansfield
Associate Executive Director
For Government Relations

The American Legion

For God and Country

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June 30, 1989

Honorable Alan Cranston
Chairman
Committee on Veterans Affairs
United States Senate
Washington, DC 20510-6375

Dear Senator Cranston:

This is in response to your letter of June 23, 1989 requesting The American Legion's comments on twelve bills, and draft proposals relating to preventive health care services and on the Arizona Veterans Memorial Cemetery.

With respect to S. 505, it would provide that the remarriage of a surviving spouse of a veteran after age 55 would not result in the termination of DIC benefits. The DIC benefit is intended to afford a measure of financial support and assistance to a surviving spouse following the death of the veteran and is based upon the spouse's dependence upon the veteran during his or her lifetime. However, upon remarriage that dependency ceases. The American Legion is opposed to the proposed continuation of DIC benefits to a surviving spouse upon remarriage, regardless of age.

S. 613 proposes to index the rates of compensation, DIC, and clothing allowance to the Consumer Price Index as determined for the fourth quarter of any fiscal year.

The American Legion opposes the indexing of compensation and DIC benefits and has testified in opposition to similar proposals in the past.

We have found that Congress has been fair and generous in providing for cost-of-living adjustments in benefits for the service-disabled and survivors of service-deceased. Of equal importance is the fact that hearings before the Veterans Affairs Committees on legislation relating to COLAs provide a forum at which other legislative issues and concerns, such as Special Monthly Compensation eligibility criteria and additional presumptive disabilities, may be discussed.

Concerning S. 860, this measure would establish specific guidelines for future budget requests for veterans health care programs. This, in our view, represents an innovative proposal which should help ensure the development and inclusion of necessary data and information concerning the adequacy of requested funding to meet the anticipated demand for health care in future appropriation submitted to the President. Additionally, such information would lend much needed credence and support to the request. The American Legion will continue to work with the Administration and the Congress to achieve a level of funding that will enable VA to fully meet the demand for health care.

received by our nation's veterans is only as good as the quality of health care professionals providing the services. The fact of the matter is that the limitations on special pay for physicians and dentists imposed in 1982 remain in place. The "Quadriennial Report to the President on Special Pay for Physicians and Dentists" mandated by Congress is pending submission which is to address pay and related issues.

The American Legion is supportive of this proposed legislation as a first step toward improving the overall pay for physicians and dentists. However, there is an increasingly critical need for a more comprehensive solution to the problems affecting recruitment and retention in the VA health care system.

Comment has also been requested on a draft bill to extend the preventive health care services pilot program authorized under section 663 of title 38, United States Code, through Fiscal Year 1994. It would, among other things, include additional preventive health care services for eligible veterans, increased funding levels, and reports on the experience under the program in 1992 and 1994.

In this time of restricted access to VA health care, especially with regard to the so-called "discretionary workload", it has been reported to us that veterans turned away from VA facilities due to budgetary restraints are, in fact, returning at a later date much sicker and requiring more medical care than if they had been treated initially. The American Legion believes the best form of preventive health care is to treat all veterans presenting themselves for care. This, in the long run contributes to cost-avoidance. More importantly, it does not unnecessarily jeopardize the veteran's health. We believe it is important for VA to evaluate a veteran/patient's general state of health and provide appropriate treatment before more serious, costly medical problems arise.

In light of the proven value of preventive health care, we further believe it would be sound medical policy for VA to assume a leadership role in the administration of preventive health care programs, to accord access to such health care services to all categories of veterans, and make these services available at all VA medical facilities.

With regard to the draft bill providing certain authority relating to the administration and operation of the Arizona Veterans Memorial Cemetery, we have no objection to this proposal.

The American Legion appreciates this opportunity to share our views with you on these important issues.

Sincerely,

Philip Riggin

E. PHILIP RIGGIN, Director
National Legislative Commission

The American Legion

For God and Country

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July 12, 1989

Honorable Alan Cranston
Chairman
Senate Committee on Veterans Affairs
Room 414, Russell Senate Office Bldg.
Washington, DC 20510

Dear Senator Cranston:

The American Legion appreciates the opportunity to express its views on S. 1188 as requested in your letter of June 30, 1989. The bill would authorize the release of Internal Revenue and Social Security Administration income data for purposes of laws administered by the Department of Veterans Affairs.

The Department of Veterans Affairs is charged with the responsibility of annually disbursing billions of dollars in disability and death benefits, and medical care services to veterans and other eligible individuals. Such needs-based benefits and services are provided by statute and require the reporting of income information by the claimant in the determination of eligibility or continued eligibility. However, over the last several years, reports by the VA's Inspector General and General Accounting Office have highlighted the fact that millions of dollars were paid by VA to ineligible individuals. The underlying problem is that the Department currently lacks the statutory authority to obtain appropriate income data from other Federal agencies - specifically the Internal Revenue Service and Social Security Administration - in order to verify self-reported income from the veteran or claimant.

S. 1188 would authorize the disclosure by the Internal Revenue Service of income information from an individual's tax return to the Department of Veterans Affairs to verify income reported under any needs-based pension, parents' dependency and indemnity compensation, health or nursing home care services, and compensation based upon a total rating due to individual unemployability. This measure would provide for notification to a claimant where a request for verification of income has been made to the Internal Revenue Service or the Social Security Administration.

The American Legion is cognizant of the magnitude of the reported overpayments. There is no doubt that a number of individuals have received benefits and services to which they were not entitled because of underreporting or failing to report certain income to VA. The Department thus far has been barred from receiving income information from Internal Revenue and Social Security. In the absence of such statutory authority, VA has, in fact, undertaken a series of income verification projects in which its data was matched with state wage records. Because of the limited scale and available information, the results thus far have not revealed extensive overpayments, such as have been found in the recent GAO Report.

We believe VA should have the authority and resources necessary to ensure the continued integrity of its benefit programs, as proposed by S. 1188, where the provision of benefits or services is contingent upon certain income criteria, so long as nothing is done to delay or curtail benefits that are payable to veterans, dependents or survivors who are entitled to receive them.

Sincerely,

John Sommer

JOHN F. SOMMER, JR.
Director
National Veterans Affairs and
Rehabilitation Commission

The American Legion
For God and Country

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July 29, 1989

Honorable Alan Cranston
United States Senate
Committee on Veterans' Affairs
Washington, D.C. 20510-6375

Dear Senator Cranston:

Thank you for providing us an opportunity to express our views with regard to legislation to establish a retirement and survivors annuity program for the judges on the new U.S. Court of Veterans Appeals, and to address issues relative to the Court's operation.

The American Legion supports the proposed legislation in S. 1243, "Court of Veterans Appeals Judges Retirement Act." This bill will provide the Court of Veterans Appeals judges with a fair and equitable retirement and survivors annuity program.

With regard to the Court's operation, The American Legion supports the proposal by which the Court, under section 204 of the bill, pursuant to section 4064(a) of title 38, would make the Federal Rules of Appellate Procedures applicable to Court of Veterans Appeals Proceedings until the Court itself adopts rules of practice and the procedures.

The American Legion has been a participant on the Subcommittee to Propose Rules for the Court of Veterans Appeals of the American Bar Association Committee on Veterans Benefits of the ABA Administrative Law Section. The purpose of the Subcommittee is to examine the Federal Rules of Appellate Procedures and make recommendations for the Court's consideration on changes applicable to the Court.

The American Legion was pleased with the enactment of Public Law 100-687, the Veterans Judicial Review Act and therefore supports the passage of S. 1243 in order to ensure sufficient resources be made available for the establishment and implementation of the Court, effective September 1, 1989.

Sincerely,

E. PHILIP RIGGIN
Director, National Legislative
Commission

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New York, New York 10017
Telephone: 212 909-2000

First Boston

Testimony of Jonathan Plutzik
Managing Director
The First Boston Corporation

RE: Department of Veterans Affairs
Loan Asset Sales

Before the Senate Veterans' Affairs Committee

June 22, 1989

My name is Jonathan Plutzik. I am a Managing Director of The First Boston Corporation, a full-service international investment banking firm headquartered in New York City. I am also head of First Boston's Federal Finance Group which has primary responsibility within our firm for meeting the investment banking needs of the federal government and its related enterprises. During the last three years First Boston has been actively involved in the federal asset sale pilot program. Most notably for the purposes of the instant hearing, First Boston currently serves as co-lead manager of the Department of Veterans Affairs' non-recourse sale of loans from the agency's vendee portfolio.1/

Based upon this experience, combined with our overall capital markets perspective, First Boston's conclusions and recommendations are:

- Non-recourse loan sales are a valid and constructive management tool for the Department and produce fair value for the federal government.

- A statutory requirement that sales proceeds be at least equivalent to a pre-ordained percentage of the unpaid

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1/ In addition to serving as co-lead manager for the Department's FY-88 non-recourse sale, First Boston currently serves as co-lead manager for the Farmer's Home Administration's loan sale transactions and co-manager for the Department of Education's asset sales. We previously testified on February 24, 1988 on the subject of federal loan asset sales before the House Budget Committee and on June 16, 1988 we testified before the House Veterans Affairs Subcommittee on Housing and Memorial Affairs pertaining to the non-recourse sale of the VA's vendee loans.

balance likely would preclude further non-recourse loan sales from the Department's vendee portfolio, and in so doing deprive the Department of real programmatic and management benefits that are otherwise attainable.

- Non-recourse sales using senior-subordinated structures are not functionally, financially, or legally the same as recourse sales.
- Congress should allow the Department the discretion to conduct both non-recourse and recourse sales.

1. Non-recourse asset sales yield fair value to the government.

First Boston believes that the Department's non-recourse vendee loan sales have produced fair value to the government. This conclusion is based upon our thorough and first-hand analysis of the vendee loan portfolio which revealed the following salient characteristics of those loans:

- high loan to value ratios;
- little "seasoning", i.e. mostly new loans;
- high delinquency and foreclosure rates;
- heavy concentration of loans from "oil patch" states with troubled local economies; and
- existence of installment sales contracts which complicate marketing efforts.

These characteristics prompt investors to demand significant discounts in order to purchase non-recourse vendee loans on a non-recourse basis or securities backed by such loans. This phenomenon is not unique to the vendee loan portfolio; rather, it is a basic reality of the marketplace and has been true of the "policy-oriented" loan portfolios of other federal agencies with which we have had asset sales experience.

I want to emphasize to the Committee, however, that the existence of these discounts does not mean that the government receives less than fair value for the assets sold. Rather, the discounts represent the judgment of the market --- that is, the considered judgment of large members of investors --- as to the value of those securities relative to other investment opportunities in the current interest rate environment and the relationship between that value and the specific characteristics of the collateral (i.e. coupon rate, maturity etc.). Therefore, a portion of the discount is attributable solely to the economic realities of the collateral or cash flows being sold. The remaining portion of the discount is attributable to credit concerns of the rating agencies and how those concerns affect investor perceptions of the collateral.

As for the loan collateral, it is important to keep in mind that these government loan portfolios were not generated on the basis of purely commercial considerations; rather they are the product of public policy. Beyond normal commercial considerations with which the capital markets are familiar, these "policy oriented" government loan portfolios often bear below market coupons, involve lower credit quality borrowers, and are impressed with significant legal restrictions such as borrowers rights considerations.

One strong indication that the federal agencies receive fair value for these sales lies in the fact that the market has not reacted to the issues differently than predicted by the agencies and their financial advisors when pricing the transactions at closing. Had the agencies sold the loans too cheaply, we would expect to see evidence of such in the investors' reaction to the securities already sold into the marketplace. We find no basis from the capital markets' financial perspective for assuming that a vendee loan on the government's books with a dollar's worth of unpaid balance is actually worth a dollar to the government if it is sold on a non-recourse basis to the public. Indeed, the empiric evidence accumulated through the pilot program now strongly suggests that the market believes that vendee loans, similar to policy-oriented government loans in general, are worth significantly less than their unpaid balances depending upon their coupon, maturity and credit worthiness. It is important to note that the same would be true for private securities sold into the capital markets. Considering that if the government keeps the loans it must continue to pay the costs associated with servicing, default, foreclosure and other contingent liability risks, we find no basis for concluding that those loans are worth substantially more to the government than to private investors.

As a result, First Boston believes the non-recourse asset sales represent a fair measure of the economic value of the government's loan portfolios.

2. Beyond financial returns, non-recourse asset sales can produce substantial programmatic and management benefits for the Department.

While most discussion of the merits of non-recourse assets sales focuses on the level of revenues derived therefrom, the several management and programmatic benefits that non-recourse loan sales make available to the Department should also be kept in mind.

In particular, we would point to the following types of benefits which have been demonstrated to accrue to the federal agencies through non-recourse asset sales:

- Aggressive asset management similar to that engaged in by the private sector;
- Thorough self-analysis by the agency of its existing management practices as a result of participation by private sector servicers, rating agencies, and investment bankers. Such analysis can assist the agency develop new and productive approaches in such key areas as loan documentation, loan origination procedures, underwriting standards, and loan compliance and monitoring.

- Productive and efficient re-deployment of limited agency personnel and resources.
- Program cost savings as the agency farms out such activities as loan servicing to the private sector.

Note that these programmatic and managerial benefits of conducting asset sales are quite independent of the level of receipts from those sales. These benefits offer the potential for greater efficiencies and improved service to program beneficiaries, not just in the year of the sale, but rather on an ongoing basis.

3. Non-recourse sales using senior-subordinated structures are not the same as recourse sales.

The non-recourse vendee sales which the Department has conducted using senior-subordinated securitization structures[2] are not functionally, financially or legally the same as recourse sales.

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[2] Senior-subordinated structures are commonly used in the private capital markets and because of their advantages these structures have been employed successfully and effectively by the other federal agencies conducting non-recourse asset sales. In a senior-subordinated structure, the senior securities are supported by a separate class of subordinate securities. The effect of this subordination is that the senior securities have priority "first call" on the cash flows attributable to the loans transferred to a trust. The purpose of the trust is to hold legal title to the loans and to receive and distribute the cash flows generated by the loans. Only after the principal and interest payments owed to the senior securities have been satisfied will the subordinated interest holders receive cash flow from the loans sold to the trust.

As an initial matter, the Department's financial exposure in a non-recourse senior-subordinated structure is substantially different from its exposure in recourse transactions. In recourse transactions, the Department (and therefore the federal government) provides full and unlimited protection to investors for the performance of any assets sold. This unlimited protection extends for the life of the securities. By comparison, in a non-recourse transaction utilizing senior-subordinated structures, the Department carries no long-term financial liability. Rather, the Department retains an ownership interest in the subordinated class or so-called "B" piece. It is this "B" piece which absorbs the risk of any defaults which would otherwise jeopardize full and timely payment of cash flows to the holders of the senior interests or "A" piece. While the Department's interest in the "B" piece certainly bears the risk of protecting the holders of the "A" piece, the Department's liability is (i) strictly limited to the market value of the "B" piece, and (ii) is completely eliminated at such time as the Department sells the "B" piece to third party private investors.

It is important to stress that, generally speaking, the holders of the "A" piece are only secured to the extent of the cash flows attributable to the loans that are transferred to the trust and the market establishes the price or value of the securities accordingly. The holders of the "A" piece have no claim beyond the "B" piece's share of these cash flows to other

Department assets or the general credit of the federal government. Moreover, upon the sale of the "B" piece (an event which has not yet occurred for the Department's previous non-recourse sales) the Department stands to realize cash revenue beyond the initial net proceeds raised by the sale of the "A" piece. Upon the sale of these "B" pieces, total return ("A" piece proceeds plus "B" piece proceeds) to the Department from these transactions measured as a percentage of the principal value of the loans sold should be very substantial.

Furthermore, in a recourse sale investors essentially disregard the credit worthiness of the individual loans offered for sale, relying primarily upon the credit of the U.S. to secure payment. In contrast, in non-recourse sales using senior-subordinated structures, investors must rely solely upon the credit worthiness of the loans transferred into the trust backing the securities offered for sale. As such, detailed and extremely careful credit analysis of the loans sold is required in the non-recourse sale, but such credit analysis is almost irrelevant to the marketplace in the recourse transaction.

Finally, due to the long-term liability borne by the government in recourse sales, the government never really gets the loans sold in a recourse sale off its books until the loans run to full term. In contrast, in a non-recourse situation, title to the loans is legally and permanently transferred from the government to a trust at the time of the transaction. The

Department's relationship to the transferred loans changes from that of an owner to that of an investor who stands to bear both the risks and benefits of changes in the value of the loans held in the trust. Getting the loans off the Department's books and transferring the loan servicing function outside the government does not adversely affect the public policy purpose for which the loans were originally made.

4. Establishing Statutory Minimum Returns for Non-Recourse Asset Sales Is Arbitrary and Would Tend to Preclude Future Non-Recourse Sales.

Existing law requires that after October 1, 1989 the Department's non-recourse asset sales must yield par. In view of the previous discussion which demonstrates that the market value of the vendee loans is considerably below their face value, it is clear that unless the par requirement is changed there will not be any further non-recourse sales beginning FY-90. This same result would likely obtain if H.R. 1415 as recently passed by the House were to become law since that bill would require net proceeds to equal on the date of the transaction at least 90 percent of the loans' unpaid balance.

In our judgment, both the "par" and "90 percent" thresholds reflect a factually insupportable assumption that the vendee loan portfolio may be capable of meeting such standards. Given what we now empirically know about the market value of the vendee portfolio, if Congress wants to permit the Department to have the realistic option of conducting non-recourse vendee loan sales the Department's authority to do so ought not be restricted by arbitrarily high minimum return standards that have no bearing to the market value of the assets.

Conclusion:

First Boston concludes that based upon the revenues and the programmatic/management benefits generated by the non-recourse vendee loan sales the Department should be permitted to conduct further non-recourse sales and that its authority to do so ought not be constrained by a pre-ordained minimum level of receipts.

Veterans Due Process INC.
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July 5, 1989

Senator Alan Cranston, Chairman
Senate Committee on Veterans' Affairs attn: Mr. William Brew
Room 414, Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Cranston:

On June 29, 1989, we received two letters from your office which concerned S. 1243: the proposed "Court of Veterans Appeals Judges Retirement Act." One of your letters was dated June 22, 1989, the other June 23, 1989. Included with each letter was a copy of said Senate bill, and an excerpt from the Congressional Record concerning it.

We appreciate your soliciting the views of Veterans Due Process, Inc. (VDP), concerning this matter, but I am personally aware that Vietnam Veterans of America (VVA) Legal Services (and others), are expending a great deal of time and effort concerning all aspects of the new United States Court of Veterans Appeals, and VDP will, therefore, defer to the judgment of VVA concerning S.1243. Perhaps the system presently utilized by the federal district courts could be used as a model, inasmuch as it obviously must function in an acceptable manner.

I would like to say that I was surprised to note in Senator Mikulski's March 23, 1989, letter to you concerning funding for the creation and operation of the new Court of Veterans' Appeals, the following:

> " . . . the subcommittee on VA, HUD and Independent Agencies has reached its spending limit for fiscal year 1989. Therefore, a waiver of the Budget Act would be required to pass a supplemental appropriation for the Court of Veterans Appeals. Furthermore, it is not yet clear whether the administration will propose a supplemental appropriation for any **DISCRETIONARY PROGRAM**." (emphasis added)

Do you believe that the new Court of Veterans' Appeals, should be a "discretionary program"?

As you know, the primary focus of VDP is to cause serious meaningful reform of the flawed VA administrative process. It is our intent to continue to work toward our ultimate goal of causing judicial review of VA decisions, in the regular federal courts (federal district courts), inasmuch as the new Court of Veterans Appeals, based in Washington, D.C., will no doubt cause great difficulty and hardship for often indigent claimants seeking or required to argue their cases, unless said judges are sent all over the country to hear cases.

VDP continues to believe that there is no good reason that war-injured veterans should be denied access to the general courts of this country, which have been very good in protecting rights. Ultimate appeal of a decision of the new Court of Veterans Appeals to an article 3 court, the Court of Appeals for the Federal Circuit, is also in Washington, D.C., and aside from the serious problem that said court cannot review a challenge to a factual determination, is yet another trip to Washington, D.C. I do not believe that many veterans have the financial resources to travel to Washington, D.C., three times: the Board of Veterans Appeals, appeal to the new Court of Veterans Appeals, and appeal to the Court of Appeals for the Federal Circuit.

We are also troubled by the 15 year "term of office" of the judges of the Court of Veterans Appeals. VDP believes that the basic protection of the District Courts i.e. life-tenured judges who are free from undue political pressure, is a must when it comes to the sad record of the VA system.

VDP will also continue to work toward our goal of allowing a veteran to have the freedom to spend his or her own money to protect their legal rights concerning VA matters, by hiring an attorney at **any** point in time in their dealings with the VA, that they desire.

I know that you recall the effort during 1986, to create a special Article 1 "Social Security Court" to provide "Judicial" review of Social Security decisions. Said effort failed because the watchdogs protecting the interests of people dealing with the Social Security system, understood that it was the administrative process, not the judicial review process, that was in need of serious reform. Said watchdogs (such as the "National Senior Citizens Law Center") realized that replacing Article 3 "Judicial Review" with the proposed Article 1 "**EXECUTIVE REVIEW**, would do little to bring under control, the system which Federal District Judge H. Lee Sarokin of Newark, in 1984 referred to as being a heartless "bureaucratic monster" that was "destroying the lives of disabled citizens."

As you know, under the VA "IRON TRIANGLE" system of "justice", many of the most powerful "watchdogs" of veterans rights, are effectively on the VA payroll (see 38 USC 3402), and for decades have not "made waves", but instead simply permitted those citizens whose rights they defend, to have no meaningful access to the American "System of Justice", which many veterans were injured defending.

Thank you very much.

Sincerely,

Philip E. Cushman
President

PEC/ftb

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SUPPLEMENTAL STATEMENT OF

the

VIETNAM VETERANS OF AMERICA, Inc.

Submitted by

PAUL S. EGAN
LEGISLATIVE DIRECTOR

to the

SENATE VETERANS AFFAIRS COMMITTEE

on

MISCELLANEOUS LEGISLATION

JUNE 22, 1989

Mr Chairman and members of the committee, as always Vietnam Veterans of America, Inc. (VVA) welcomes the opportunity to transmit its views on the varied legislative initiatives within the committee's jurisdiction. The submission of our views on those of the 13 bills of interest to us which you listed in your June 23, 1989 letter is no exception. Under the circumstances, however, we believe it appropriate to express our concerns that the committee would solicit views on such a wide range of legislative matters without the benefit of at least one separate formal hearing.

With this in mind we offer a constructive suggestion and trust the committee will give it the serious consideration it deserves. This organization, and probably the other veterans organizations as well, has taken pride in the fact that the committee's membership is so heavily represented by members of the Senate leadership on both sides of the aisle. The fact that the committee includes the Majority Leader and each of the Senate's Whips is a source of continuing pride owing to expectations that veterans affairs will continue to be given close attention by the leadership of both the majority and minority parties.

It has become reasonably apparant, through, that competing demands for time and attention have apparantly resulted in less, rather than more, attention to the committee's business by its most politically prominent and influential members. With this in mind, we recommend that the Veterans Affairs Committee be expanded and divided into subcommittees capable of holding hearings on relevant legislation within their respective jurisdictions. Each subcommittee should also be fully authorized to favorably report legislation for full committee consideration.

Such an expansion would be fully consistent with the elevation in stature of the VA to Cabinet status and would comport with congressional committee treatment of other Cabinet level agencies. In fact, there are in existence some committees much larger than Veterans Affairs which are divided into subcommittees whose jurisdictions are considerably more limited than the Veterans Affairs Committee and whose subject agencies' stature is far less obvious. The Senate's Committee on Small Business, for example, consists of 19 members by contrast with the Veterans Affairs Committee's 11 members. Similarly, the Small Business Committee is divided into six subcommittees by contrast with none in the Veterans Affairs Committee. In our opinion, an expansion of the committee and a division of it into subcommittees would be a propitious and welcome move at the earliest possible date.

S. 505

The VVA has no objection to this legislation. This bill would properly allow the remarriage without loss of benefits of a surviving spouse in receipt of DIC benefits after five years since the death of a spouse as long as the surviving spouse was 55 years of age or older. We see no good reason to penalize surviving spouses desiring to remarry by holding the availability of DIC benefits hostage to inherently anti-family budgetary considerations.

S. 613

This legislation would index cost of-living adjustments in disability compensation and survivors benefits automatically. The VVA opposes this measure since the need to annually legislate upward adjustments in benefits provides a legislative vehicle each year to accomplish a variety needed changes in veterans benefits programs.

S. 860

This measure would require the Department of Veterans Affairs (DVA) to supplement its annual budget submission with a specific analysis of how much more than that included in the Administration's budget would be needed to accommodate anticipated demand by veterans for health care.

We would prefer it if this bill were further adjusted to require an evaluation accompanying the annual budget submission showing the number of service disabled veterans who are not expected to receive care or whose care can be expected to be deficient as a result of resources devoted to endeavors unrelated to service disabled health care. We note here, for example, the number of regular hospital beds that have been converted to nursing home beds. Similarly, some construction projects more likely to be of value to service disabled veterans have been delayed by construction of nursing homes. Moreover, an evaluation in this analysis might also be required to assess the effect on health care quality of anticipated delays in services for disabled veterans necessitated by staffing shortages.

S. 1145

This measure would reestablish the Advisory Committee on Native Americans within the Department of Veterans Affairs. The VVA supports this as a way of assuring that Native American veterans have a voice within the agency and also as a way of providing a forum through which a general exploration of veterans programs can be undertaken to assure their suitability to Native Americans.

S. 1146

As mentioned above, it would be well for a Native American Veterans Advisory Committee to be reestablished in order to examine current veterans programs for their applicability to Native American. One excellent example of the need for this type of evaluation is embodied in S. 1146.

This particular measure would establish a pilot program in which the DVA offered direct home loans to Native American veterans desiring to purchase property on trust, communally-owned or reservation lands. At first glance, this is a supportable idea. However, there appears to be a significant problem with the approach taken in the bill.

How, for example, can a Native American secure such a loan when the property is not on U.S. territory? In the event of a default, it seems unlikely that the DVA would have any way of enforcing an acquisition of title to the property. The

VVA would welcome an opportunity to support legislation to enhance the availability of the home loan guaranty program for Native Americans, but this particular bill appears unworkable.

S. 1211

This measure would rescind the DVA's discretionary authority to offer the maximum level of special pay to certain physicians and dentists by requiring that it be paid. In making this discretionary authority mandatory, it is intended that some of the agency's recruitment and retention problems can be ameliorated. The VVA fully supports the intent of this legislation.

S. 1243

This measure would make a variety of technical changes in the Veterans Judicial Review Act of 1988. Each of the corrections are designed to facilitate the smooth opening and subsequent operation of the court. Additionally, it would establish a retirement benefit system for the judges sitting on the new court. The VVA fully supports this legislation but strongly believes there are a variety of additional adjustments designed to assure fairness to the veteran who will rely on the court that should be made. These added adjustments were suggested earlier this year to the committee in a January 11, 1989 letter to the Chairman.

Mr Chairman, that concludes our statement.

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July 7, 1989

Honorable Alan Cranston, Chairman
Senate Veterans Affairs Committee
SR-414 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Cranston:

This will reply to your June 30, 1989 request for the views of the Vietnam Veterans of America, Inc. (VVA) on legislation, S. 1188, introduced by Senator Murkowski. At the present time, the VVA is unprepared to support this legislation. While it may be evident from the final GAO report requested in 1985 by Senator Murkowski that pension payments are being made to veterans who are ineligible, it is also abundantly clear from the same GAO report that it is a bit premature to conclude that greedy veterans may be uniformly bilking the system. While we are convinced this conclusion is not what has motivated the introduction of S. 1188, passage of this bill without having taken other remedial steps first might suggest just such a conclusion.

Beginning at page 76 of the report, there is a rather cogent discussion of the role played by the Department of Veterans Affairs (DVA) in actually facilitating overpayments as a result of failing to provide understandable instructions for veterans or their survivors to follow in filling out the annual income questionnaire, the Eligibility Verification Report (EVR). The VVA concurs with the GAO report that much should be done to improve the instructions and we further believe this should be done before considering this legislation as a remedy.

While we do not condone deliberate underreporting of income, a new simplified form with easily understood instructions should be developed and tested first. Such a form might even include a line either asking for the appropriate income amount listed on an annual tax return or asking for permission to verify income with the Internal Revenue Service (IRS).

In this connection, we note the comments in the GAO report from the IRS in which concerns are expressed about the DVA's inability to maintain the security of confidential information. Those concerns are outlined in a December 22, 1987 letter from the IRS at page 92 of the GAO report. With this in mind, passing a bill having the potential effect of jeopardizing confidential tax information at this time must be seen as ill-advised.

Under the circumstances, Mr Chairman, we recommend that S. 1122 not be reported favorably at the Committee's July 20, 1989 markup. As always, your attention to the views of the VVA is appreciated.

Sincerely,

Paul S Egan

Paul S. Egan
Legislative Director

cc: Honorable Frank H. Murkowski

DAV

Motto: "If I cannot speak good of my comrade, I will not speak ill of him."

DISABLED AMERICAN VETERANS

NATIONAL SERVICE and LEGISLATIVE HEADQUARTERS
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June 30, 1989

Honorable Alan Cranston, Chairman
Senate Veterans Affairs Committee
414 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Cranston:

I am pleased to provide you with DAV's response to your written questions following your hearing of June 22, 1989.

I trust our views will assist the Committee in its deliberations.

Sincerely,

RICHARD F. SCHULTZ
Associate National Legislative Director

RFS:lms

Home Loan Guaranty Program

Question

If the number of no-bids increases under legislation like S. 1158 or H.R. 1415, and lenders respond, as later testimony today will suggest they might, by adopting more stringent loan-underwriting standards for VA guaranty loans, would you consider this an improvement in the program because it would reduce defaults and foreclosures, or a threat because it would make it more difficult for some veterans to obtain a VA guaranty loan?

Answer

Mr. Chairman, as you know, S. 1158 would prohibit the DVA from considering the full cost of borrowing funds when determining "net value" and require that the guaranty amount would be subtracted from the total amount necessary to buy the home at foreclosure before any interest may be added to the cost of acquiring a home.

Also, the conference report to the Deficit Reduction Act of 1984 makes it clear that Congress did not intend to change the VA policy of not considering interest cost that the United States would incur if it were necessary for the government to borrow the funds for a particular acquisition. In its report on H.R. 1415, the House Committee on Veterans Affairs asserts that "because the Secretary is not charged any interest cost for funds used in acquiring a foreclosed property, the cost of government borrowing is not a cost incurred by the Secretary and should not be permitted under this statute to be included in the definition of 'net value'."

Mr. Chairman, as you know, over the past several years actions have been taken to "tighten up" loan-underwriting standards. DAV generally supports these efforts as we believe veterans are not well served when placed in homes they cannot afford, ultimately resulting in foreclosure. However, should a more stringent loan-underwriting standard be put in place resulting in deserving, creditworthy veterans being denied home loans, we would view this as counterproductive and not in keeping with the benefit entitlement nature of the Home Loan Guaranty Program.

Mr. Chairman, when deciding what action the Committee will ultimately take on this controversial issue, we urge that you keep in mind the purpose for which the Home Loan Guaranty Program was created -- to assist veterans in obtaining mortgage credit without a down payment -- and endeavor to strike a fair balance between the needs of our nation's veterans, their government and mortgage lenders.

Question

Can each of you tell us whether you have members who have experienced difficulty in being able to use their home-loan guaranty entitlements because of very high real estate prices in certain parts of the country -- and if so , please tell us which areas are experiencing problems.

Answer

Mr. Chairman, while we are aware that there are certain areas of the country where the VA home loan guaranty is under-utilized or not utilized at all, we have not received complaints from our membership relative to the unavailability of VA home loan guaranty entitlement.

Agent Orange

Question

First, as I noted earlier, there is a range of views on S. 1153 and, more specifically on those provisions which would provide an interim presumption for non-Hodgkins Lymphoma and soft tissue sarcomas. Would you each, for the record, identify and provide your views on those scientific studies which you believe best support your current position on whether there should be a presumption as to these two diseases.

Second, please indicate how, if at all, your organization plans to participate in VA's rule making efforts to comply with the California Federal Court decision invalidating VA's Agent Orange regulations.

Answer

Initially, regarding the issue of providing presumptive service-connection, it is the DAV's view that a permanent presumption of service-connection is indicated for veterans who were exposed to Agent Orange during service in Vietnam and are now afflicted with non-Hodgkins lymphoma (NHL). Although we favor creating a permanent presumption, we will not necessarily oppose the providing of interim benefits for NHL.

As we are all so keenly aware, Agent Orange has been a lingering question that, for a variety of reasons, has been extremely difficult to come to grips with over the last decade.

More precisely, the controversies swirling around the question of what, if any, adverse health effects are produced by exposure to Agent Orange have been more troublesome. S. 1153 represents a meaningful, honest attempt to address this question.

The DAV's support for granting service-connection for NHL is predicated by what we believe to be persuasive indicators of an association between exposure and subsequently diagnosed NHL. Noteworthy among the many studies and literature are:

* "Soft Tissue Sarcoma and Non-Hodgkins Lymphoma in Relation to Phenoxyherbicide and Chlorinated Phenol Exposure in Western Washington" (J.S. Woods. _et al_);

* "Agricultural Herbicide Use and Risk of Lymphoma and Soft Tissue Sarcoma" (JAMA 1986);

* "Proportionate Mortality study of Army and Marine Corps Veterans of the Vietnam War" (1987); and

* a National Cancer Institute study of herbicide use and other agricultural factors in Nebraska (June 1988).

As we have indicated in previous testimony to the Committee, medical science and research have not been precise -- and perhaps will never be -- to establish a firm relationship between exposure and subsequently developing disease. However, we believe the evidence and indicators relating to NHL are sufficient to make such a finding regarding such relationship.

Although not conclusive, these studies have identified higher risk factors exist for development of NHL for workers in certain occupations using herbicides similar to Agent Orange. Also, a higher incidence -- up to six-fold -- of NHL in those individuals has been identified.

Taken in combination, these studies have been expressed in terms of being suggestive of an association between herbicides and NHL. Such a relationship has been described by researchers as "worrisome."

Studies also indicate that a latency period of at least 15 years must ensue before elevated risks for lymphoma can become apparent.

Finally, it has been said that certain groups of Vietnam veterans can be very closely compared to the agricultural or forestry workers that have been studied in the mentioned research projects as it they relate to occupational similarities.

Our review of the various research efforts thus far accomplished regarding soft tissue sarcoma (STS) do not permit us to reach a similar conclusion as to a possible relationship between exposure to Agent Orange and subsequent by developing disease. Critiques of the various studies dealing with STS have indicated various weaknesses and flaws in those studies' methodology and analytical conclusions. Thus, at this time, we see a much weaker body of evidence pointing to any association. However, we eagerly look forward to reviewing any additional literature and/or studies that may be forthcoming regarding this issue, especially the Selected Cancers Study.

The DAV anticipates playing an active role in the development and rule-making process currently underway within the VA. As with all issues, we are open to frank discussions and participation in a continuing dialogue in order to reach a mutually satisfactory response to the VA's efforts in this regard. Be assured, the DAV will be carefully reviewing the proposed regulations concerning Agent Orange and will not hesitate to inform the VA -- as well as the Congress -- as to our criticisms, concurrence or suggested language.

WRITTEN QUESTIONS FROM CHAIRMAN CRANSTON TO THE DEPARTMENT OF VETERANS AFFAIRS AND THE RESPONSES

I. Staffing

Question: 1. How many VA police officers are there nationwide?

Answer: 1,947

Question: 2. How many vacant VA police officer positions are there nationwide?

Answer: Although we do not maintain a precise count of vacant VA police officer positions nationwide, available information suggests the Department does not have a large number of standing vacancies, and most are filled on a timely basis.

Question: 3. How many persons are there in VACO Security Service?

Answer: There are two staff persons in VACO Security Service.

Question: 4. How many persons are there in each of the other services under the Director of Administration?

Answer:

	FTEE
Director of Administration	4
Security Service	2
Voluntary Service	3
Medical Administration Service	28
Building Management Service	8
TOTAL	45

Question: 5. How was the staffing level in each of the service units under the Director of Administration in VHS&RA determined?

Answer: The Director of Administration receives an allocation of 45 FTEE. This number could change periodically based upon the needs of VHS&RA. Periodic review is made of the needs of the Services involved and the FTE is assigned accordingly.

Question: 6. The VA Inspector General's office, in its recent report on security service operations, has recommended that staffing of VACO Security Service be increased.

6A. Does VA agree with that recommendation?

Answer: In its most recent draft report on Security Service operations the VAOIG recommended that the Chief Medical Director review responsibilities assigned to VA Central Office Security Service, determine staff requirements and adjust staff accordingly. The Chief Medical Director concurred with the recommendation.

SENATOR CRANSTON

Question: 6B. What specific plans, if any, does VA have to increase the staff in Security Service?

Answer: The plan at the current time is that staffing will be reviewed within 120 days following appointment of the new Director, Security Service.

Question: 7. What resource analysis, if any, has been done to determine the appropriate staff size of VACO Security Service?

Answer: In November 1988 an analysis was done which revealed the need for increased staffing in Security Service. The need for additional staff was based on the finding that workload had increased significantly in the Service, due in part to involvement in the following areas: Pre-employment checks; communication on new hires with local VAMCs; increased correspondence; heavy obligations with respect to physical security; input to construction projects; security program surveys; interactions with the Office of Personnel and Labor Relations; and other day-to-day interaction with VAMC and staff in Central Office. This review identified the need for the following additional FTEE:

2 FTEE - Central Office (for total staff of 4)
4 FTEE - Regional Security Officers (total of 8)
1 FTEE - Instructor/Investigator (total of 4)

Question: 8A. What are the specific duties and responsibilities of VACO Security Service?

Answer: The responsibilities of VACO Security Service are: developing policy, determining training needs, directing program evaluations and investigations, overseeing screening of applicants for police officer positions, providing advice to other VA officials regarding security matters and equipment, coordinating with the Attorney General and other Federal agencies, and responding to external requests for information.

Question: 8B. Through how many officials does the Director of VA Security Service in VACO report to the Chief Medical Director?

Answer: There are two officials through whom the Director reports.

Question: 9. At how many of the VAMCs has VACO Security Service never done a program evaluation of security services?

Answer: Seventy-five. We are currently accomplishing them at a rate of six per month.

SENATOR CRANSTON

Question: 10. Of the VAMCs where VACO Security Service has conducted a program evaluation, at which has it been determined that the security program was not being operated in a satisfactory manner?

Answer: Twenty security programs have been found to be operating unsatisfactorily in some aspect of their operations.

Question: 11. Which 5 VAMC security services would be considered the best performers nationwide? Which 5 VAMC security services would be considered the worst performers nationwide? What are the bases for the designations in each category?

Answer: This type of comparison has never been made because of its subjectivity. An individual security unit is evaluated solely based upon its conformance to the Security Program Evaluation Checklist. We do not evaluate security units one to another, and do not believe that it is possible to accurately identify the best and worst performers as requested.

Question: 12. How many VAMC security services nationwide have detectives on the staff?

Answer: There are presently thirty-three medical center security units that have at least one detective staff. Three of these medical centers have more than one detective. The total number of detectives employed at VA medical centers is forty-one.

Question: 13. What criteria are used to determine that a VAMC security service needs a detective on staff?

Answer: The major factor in determining the need for a detective on staff is the existence of a significant number of crimes which require follow-up investigation. If the number of follow-up investigations becomes great enough that it inhibits patrol officers from accomplishing their primary duties of crime prevention patrol, then a detective position is needed.

SENATOR CRANSTON

Question: **14. The Inspector General's office, in its March 1989 audit on security services at the West Los Angeles VAMC, determined that the staffing level was excessive.**

14A. Has VACO reviewed/analyzed the appropriateness of security service staffing levels at that VAMC and at the other VAMCs?

Answer: **The Acting Director, Security Service, requested the responsible Regional Security Officer to review the findings of this audit. As a part of that review the Regional Security Officer discussed the Inspector General's determinations regarding staffing in a meeting with the newly appointed Chief, Security Service at VAMC West Los Angeles. As a result of the meeting the Regional Security Officer concluded that the Inspector General's findings were not accurate. The Medical Center Director, who is responsible for determining staffing levels, has advised the Inspector General that he will conduct a review of staffing levels in Security Service.**

Question: 14B. If not, why not?

Answer: VACO Security Service regularly reviews staffing levels at VA medical centers. Also, Regional Security Officers discuss staffing problems and levels during program evaluations and periodic calls to security units. Noted problems in staffing levels and possible solutions are discussed with security unit chiefs and medical center management as appropriate.

Question: 15. Who is responsible for determining the appropriate size of the security service at an individual VAMC?

Answer: The medical center director determines the appropriate size of the security unit.

Question: 16. What criteria are used to determine the appropriate staff size of the security service at an individual VAMC?

Answer: Normal police staffing is determined by considering three basic factors:

a. The size and physical dispersion of the medical center
b. The threat and incidents of crimes, and
c. The total number of patient, employee and transient population.

To determine actual staffing allocation, a medical center director must consider these factors along with needs for staffing in other critical areas of the medical center.

SENATOR CRANSTON

Question:	17. At which 20 VAMCs were the highest number of criminal acts committed in fiscal yesr 1988?
Answer:	The 20 VAMCs with the highest number of reported criminal acts are as follows: Providence, RI San Juan, Puerto Rico Bay Pines, FL Cleveland, OH San Diego, CA St. Louis, MO W. Los Angeles, CA Indianapolis, IN Allen Park, MI New York, NY Battle Creek, MI Boston, MA Brooklyn, NY Miami, FL Portland, OR Togus, ME San Antonio, TX Long Beach, CA Albuquerque, NM West Haven, CT
Question:	18. For the VAMCs with the highest number of criminal acts in fiscal year 1988, what actions are these VAMCs required to take to address the situation?
Answer:	All VA medical centers, regardless of the level of criminality, are expected to conduct security surveys at least once a year, to be cognizant of patterns and levels of crimes, and to adjust patrols and activities accordingly. The number of criminal acts at any given medical center cannot be used alone to accurately depict the quality of security provided.
Question:	19. Under what circumstances at a VAMC is it considered acceptable to have only 1 police officer on duty at a time?
Answer:	It is considered acceptable to have one police officer on duty at smaller, non-psychiatric medical centers during times when total population is less than about 500.

SENATOR CRANSTON

II. Salaries

Question: 20. What specific criteria are used to approve a VA security service for special pay? Please provide copies of all applicable circulars or guidance issued in the last 3 years on special pay for security services.

Answer: Approval of special rates for DVA security service positions is appropriate when necessary to achieve adequate staffing; recruit personnel with specialized skills; or to correct staffing problems when there is evidence that the staffing problems are being caused by higher non-federal rates of pay. Higher non-federal pay alone is not sufficient justification to approve special rates. There must be evidence thru documented vacancies and/or significant turnover (some or all of which is pay related) that higher non-federal pay is adversely affecting DVA staffing to a significant degree.

Copies of MP-5, part II, chapter 3; DM&S Supplement MP-5, part II, chapter 3; and DM&S Circular 10-88-138 are attached.

Question: 21A. How many VAMC security services have been approved for special pay?

Answer: Currently, 34 medical centers have special rates in effect for Police Officers.

Question: 21B. How many VAMC security services have proposals in process for special pay?

Answer: Requests for establishing special salary rates for Police Officers at 3 medical centers are currently being evaluated.

Question: 21C. How many VAMC security services have been denied special pay?

Answer: From October 1, 1987, to present, no requests for establishing special salary rates for Police Officer have been turned down.

Question: 21D. How many VAMC security services in fiscal year 1988 had a turnover rate equal to or greater than 25%?

Answer: In 1988, 48 medical centers had turnover rates equal to or greater than 25%.

SENATOR CRANSTON

Question: 21E. Which VAMC security services experiencing a turnover rate equal to or greater than 25% in fiscal year 1988 have not been approved for special pay?

Answer: Of the 48 medical centers having turnover equal to or greater than 25%, the following 29 have not requested special rates for police officers:

Togus, ME
White River Junction, VT (pending)
Wichita, KS
Atlanta, GA
Coatesville, PA
Danville, IL
Denver, CO
Des Moines, IA
Dublin, GA
Erie, PA
Fort Meade, SD
Fort Wayne, IN
Grand Island, NE
Indianapolis, IN
Knoxville, IA
Manchester, NH
Marlin, TX
Montgomery, AL
Montrose, NY (pending)
Murfreesboro, TN
Northampton, MA
Portland, OR
Reno, NV
St. Louis, MO
Salem, VA
Salt Lake City, UT
Tomah, WI
Walla Walla, WA
Wilkes Barre, PA

Question: 22A. What specific criteria are used to approve a VAMC security service for grade-change classification for its police officers from a GS-5 to a GS-6?

Answer: The Department is required to use the OPM Grade Evaluation Guide for Police and Security Guard Positions, issued in April 1988, to classify all nonsupervisory Police Officer positions. This Guide contains classification criteria for distinguishing between GS-5 and GS-6 positions. The Guide is in the Factor Evaluation System (FES) format and bases grade levels on point values credited to nine separate factors (e.g. knowledge required, supervisory controls, complexity, etc.)

The Department also issued a Personnel Circular Letter (PCL) to supplement the OPM Guide. The PCL provides additional guidance on identifying police work assignments that will support the GS-6 level.

Individual Police Officer positions are classified by the servicing Personnel Office by comparing the duties assigned by local management to the position with the criteria in the OPM Guide as supplemented by the VA PCL.

SENATOR CRANSTON

Question. 22B. How many VAMC security services have been approved for grade-change classification?

Answer: Each medical center is responsible for assigning work to and classifying Police Officer positions at the facility. The classification of these positions is based on a comparision of the duties assigned by local management with the OPM Guide as supplemented by the VA PCL. The classification decisions are made by the local Personnel Office and are not subject to the routine approval of Central Office or the Medical Regions. Although we do not know the number of services involved, as of March 31, 1989, there were 274 GS-6 police officers. This is a significant increase over the number prior to the new standard; there were only 28 in June 1988.

Question: 22C. How many VAMC security services have proposals in process for grade-change classification?

Answer: Local management is responsible for the assignment of work to and the classification of Police Officer positions under its purview. Consequently, we do not know how many Medical Centers are considering reclassifying their positions to the GS-6 level.

Question: 22D. How many VAMC security services have been denied grade-change classification?

Answer: Local management is responsible for the assignment of work to and the classification of Police Officer positions under its purview. Consequently, we do not know how many medical center Security Services made a recommendation that its Police Officer positions be upgraded to GS-6, which was subsequently denied.

Question: 23. How many VAMCs are considered to be in high crime ares (i.e., equal to or greater than 8.5 on the FBI crime index scale)?

Answer: There are 78 VAMCs which are considered to be in high crime areas. It should be noted that the identification of a medical center as being in a high crime area does not necessarily mean that the facility is located within the municipality but may be located near that area. Examples are: Portland (which is not in the city of Portland) and Lake City, FL (for which the Gainesville crime index is used because Lake City does not have its own index.)

SENATOR CRANSTON

Question: 24. How is the grade of the security chief at an individual VAMC determined?

Answer: The grades of the security chief positions at individual medical centers are determined by comparing the duties assigned with the appropriate classification standard. If the security program operates at the Service level, the chief is centralized for classification purposes to the Chief Medical Director. In these cases, the positions are classified by the Office of Personnel and Labor Relations in VACO. If the program operates at a Section level, the chief position is classified by the local Personnel Office. The OPM Supervisory Grade-Evaluation Guide is the appropriate standard for most security chief positions. If, however, the chief is primarily responsible for planning, implementing, managing and evaluating a large and complex program, the new GS-080 Security Administration standard may be appropriate.

Question: 25. At how many VAMCs is the security chief the lowest graded service chief?

Answer: We only maintain records on the grades of security chief positions which function at the Service level and are centralized to the Chief Medical Director. Of the approximately 60 medical centers in this group, the security chief is either the lowest or one of the lowest graded service chiefs.

III. Background Checks

Question: 26. What procedures are presently used to perform a criminal background check on a newly-hired VA police officer?

Answer: VA police officer positions are now designated noncritical-sensitive and all newly hired officers are now subject to an upgraded minimum background investigation conducted by the Office of Personnel Management (OPM). This investigation includes a check of the National Crime Information Center as well as the FBI for a criminal record. Shortly after the police officer enters on duty, the completed forms necessary for intitiating the OPM investigation are forwarded to the VA's Security Officer in the Office of the Inspector General for transmittal to OPM.

SENATOR CRANSTON

Question: 27. What is the status of the criminal background recheck on all current VA police officers?

Answer: Number of investigations returned by OPM with no adverse information: 1,105

Number of investigations returned by OPM with adverse information: 249

(a) Number adjudicated favorably: 194

(b) Number where action was taken: 8

1 employee received an admonishment;
3 employees were counseled;
1 employee was reprimanded;
1 employee has a proposed demotion;
1 employee is in the process of being separated; and
1 employee resigned in lieu of being terminated.

(c) Number under further review: 47

Number of investigations still pending with OPM: 448.

Question: 28. To the extent that all rechecks have not been completed, what specifically has caused the delay in those rechecks?

Answer: We expect that some delays may be caused by return of unclear fingerprints to field facilities for reprinting, slow responses from previous employers vouchered, etc.

Question: 29. When does VA expect to have all criminal background rechecks completed?

Answer: Again, this would depend entirely on when we receive all completed background checks from OPM. Pending some unforeseen circumstance, we would hope to have all background checks completed by late summer.

SENATOR CRANSTON

IV. Structure/Accountability

Question: 30. What specific factors are analyzed in preparing a performance evaluation on a VAMC security chief?

Answer: Performance standards and the evaluation of security chiefs under those standards are administered locally at each VA medical center. The performance of VA security chiefs is not evaluated under a common, generic, or "prototype" set of performance requirements established by Central Office.

Full authority to develop performance standards and to prepare performance evaluations has been delegated to first-line supervisors at each VA medical center. Performance standards are more practical and valid if they are developed locally and reflect the specific conditions and needs of the everyday environment. Considerations specific to conditions present in any given locality would include type, size, and location of the medical center, size of the workforce, patient census, local crime problems and trends, etc., in addition to supervisory and managerial responsibilities.

Question: 31A. Do performance evaluations of security chiefs analyze the level of crime at the respective VAMC and whether that level of crime is considered acceptable?

i. If yes, please provide examples.

ii. If not, why not?

Answer: Since the performance standards and evaluations of security chiefs are not centralized to VA Central Office, we are not aware of whether any locally developed performance plan and subsequent evaluation includes a standard which addresses local crime levels.

Question: 31B. Do these performance evaluations analyze percentages of successfully resolved cases at individual VAMC's?

i. If yes, please provide examples.

ii. If not, why not?

Answer: Again, since there is no centralized development or review of performance plans and evaluations pertaining to security chiefs, we do not know whether an analysis of crimes solved is a factor generally used to outline and evaluate performance.

SENATOR CRANSTON

Question: 32. How often does a VAMC personnel officer conduct a personnel management evaluation of security service?

Answer: Current Department policy requires each medical center to conduct a systematic position management review of its security service at least every three years, and reviews are conducted in conjunction with organizational changes such as elevation to service level. The responsibility for the conduct of the review varies by medical center but it must be defined in local policy. Generally, the personnel officer is responsible for either conducting the review or providing technical support to the official who does.

Question: 33. What areas are analyzed in a personnel management evaluation?

Answer: The purpose of the position management review is to ensure that the work is organized and assigned among positions in the most efficient and effective means possible. Generally, the reviews include an analysis of the staffing structure, job design, work processes and procedures, delegations of authority and the ratio of supervisors to subordinates.

Question: 34. Does the personnel management evaluation analyze the appropriate staff size of security services at the individual VAMC? If not, why not?

Answer: The position management reviews conducted by local management analyze the appropriate security service staff size.

Question: 35. How often do individual VAMCs conduct functional reviews of security services?

Answer: As with the functional review of any service at a medical facility, the scope, conduct and frequency of reviews of Security Service are determined by local management, in accordance with the facility's policy on the methods established for the functional review program. Medical Center Management is required to establish a continuous review program. There is no centrally directed policy, however, that each service be reviewed at a specific time. Where there are obvious problems or out-of-line situations in Security Service or in any other service, medical center management may initiate reviews at frequent intervals or may require the completion of problem-focused reviews or continuous monitors.

SENATOR CRANSTON

Question: 36. What aspects of security services are analyzed in functional reviews?

Answer: The organization of Security Service may vary depending on such factors as the size and complexity of the facility. While we cannot identify specific areas of review without input from each facility's Security Service, the intent of the functional review of all services is to determine effectiveness and efficiency; analyze management and other resource needs; identify problem areas and opportunities for correction; recommend the need for policy changes; and initiate action to correct out-of-line situations.

Question: 37. Security chiefs at individual VAMCs prepare annual management briefings to apprise the VAMC medical director of security issues at the center.

37A. What types of information are included in the briefings?

Answer: The type of information contained in the briefings varies from facility to facility but may include such areas as staffing levels, space, budget, equipment, quality assurance, risk management, and special issues identified by top management for evaluation during a particular period.

Question: 37B. Should and do the briefings show biennial or triennial crime trends and trends of satisfactorily resolved cases?

Answer: The briefings may include reviews of crime trends and trends of satisfactorily resolved cases, but it is not specifically required.

Question: 37C. Should and do the briefings highlight categories of crime that have become unusually high?

Answer: The briefings may highlight categories of crime that have become unusually high, but it is not specifically required.

Question: 37D. Should and do the briefings establish specific measurable goals to reduce or limit crime to a particular level? If not, why not?

Answer: The briefings may contain information as to how well security operations have reduced or limited crimes in certain areas. This is dependent upon whether goals in such areas are needed and developed. It may be unnecessary or redundant to provide this type of information during an annual briefing since most security unit chiefs meet daily with medical center top management to discuss daily activities, significant matters that have occurred in the previous 24 hours and to plan follow-up activities. However, at some locations periodic reviews are held to review monthly crime reports and plan action regarding any developing trends.

SENATOR CRANSTON

Question: 38. What performance standards are used to evaluate the security chief, detectives, supervisory officers, and police officers at individual VAMCs?

38A. Are these performance standards uniform nationwide? If not, why not?

Answer: Performance standards for security personnel are not uniform nationwide. Effective performance standards must reflect the work environment in which the individual employee works. Because of the significant variance in the work environment from medical center to medical center, uniform standards would probably fail to address the specific needs the local medical center may require of the security chief and other security personnel. Performance standards should also reflect local problems that the local medical center management may wish the security chief or other security personnel to address during a given appraisal period. As such, the performance plans can change from year to year to suit local needs. This provides for an effective means in which local managers may use the performance management system as a tool in carrying out their mission.

Question: 38B. To what extent do the standards set quotas for detecting a particular number of criminal offenses?

Answer: As standards are established locally and are not systematically reviewed to determine if specific measurement criteria is included, we are unable to specify the extent to which standards may be used to set quotas for detecting a particular number of criminal offenses.

SENATOR CRANSTON

V. Training

Question: 39. What specific actions have been undertaken recently or are planned to improve VA police officer training?

Answer: The most recent actions taken regarding training are:

a. Renovated the VA police school building (scheduled to be completed by September 30, 1989).

b. Developed and conducted a training course for all VA detectives at the VA Police School in Little Rock, Arkansas (held June 5-9).

c. Developed a training course for security unit chiefs to be held at the VA Police School (first session planned for September 18-22).

d. Developed an intensive training course for baton instructors. This will probably be done at field locations by an instructor from the VA Police School.

e. Recently improved the unarmed defense program that is presented to newly employed officers. This program is designed to improve the officer's skills in self defense and at the same time to teach techniques that are designed to reduce the possibility of injury to the individual being controlled.

f. Developed a training unit on AIDS for use in inservice training.

g. Provided each medical center with a video training tape on the new U.S. Court Violation Notices for use in inservice training.

Question: 40. What efforts have been initiated to solicit the views of associate medical center directors, security chiefs, and police officers nation wide regarding police officer training needs?

Answer: Police officers attending the VA Police Training School are provided with a course critique upon completion of the course. These officers are given the opportunity to comment on the training as well as recommending changes to improve the program. The staff of the VA Police School is presently planning a questionnaire that will be used to solicit recommendations on training needs from associate medical center directors and security service chiefs. Additionally, the staff of the school is planning a questionnaire that will be mailed out to security service chiefs so feedback may be gathered on a police officer's performance after having attended the training course.

SENATOR CRANSTON

Question: 41. What percentage of candidates have failed the VA police officer training course?

Answer: There have been 5,448 police officers attend the VA Police Training School since the school's inception in 1971. There have been 216 candidates fail to successfully complete the prescribed training. This equates out to a failure rate of four percent.

Question: 42. What is the VA Policy regarding allowing a candidate to retake the VA police officer training school course should she/he not complete the course satisfactorily?

Answer: Participants that do not successfully complete the prescribed training course must have their statutory law enforcement and arrest authority immediately withdrawn by the employing medical center. If the director of the employing medical center requests that the officer be retrained and assures that the officer will be provided with remedial training prior to attendance, then the officer is allowed the opportunity to return for a second time.

Question: 43. What percentage of candidates attending the VA police officer training school for the first time have successfully passed the course?

Answer: Of the 5,448 candidates attending the training, approximately 95 percent have successfully completed the training the first time they attended the course. The one percent variance from the four percent failure rate indicated in question number forty-one is due to the students who have previously attended and failed and then later successfully completed the training.

Question: 44. What is VA's position regarding periodic required physical fitness training for all VA police officers?

Answer: The Department of Veterans Affairs has specific medical and psychological standards for VA police applicants and incumbents. These standards require a complete physical and psychological assessment for applicants upon initial appointment, and an annual reexamination to determine their continued physical and emotional suitability to perform the functional requirements of the position. When these standards are properly applied, they are designed to measure whether the applicant or incumbent possesses a satisfactory level of physical fitness for the position. These standards conform to FPM Supplemental 339-31, Reviewing and Acting on Medical Information, and OPM Qualification Standards, Police Series GS-083.

SENATOR CRANSTON

Question: 45. Are annual performance evaluations on VA police officers used to highlight possible training needs?

a. If yes, please provide examples.
b. If not, why not?

Answer: Annual performance evaluations on VA police officers are not known to be used to highlight possible training needs. The purpose of such an evaluation is not to identify training needs but to evaluate performance. Training needs should be identified and addressed prior to the evaluation of the performance so that employees may be given an opportunity to improve their performance.

Question: 46. Has the Attorney General (pursuant to the consultation requirements of Public Law 98-528) reviewed and approved the adequacy of the VA police officer training school course?

Answer: We are required by PL 98-528 to consult with the attorney general before prescribing regulations regarding security and law enforcement. In 1985 the Attorney General reviewed the VA Police Officer Training Course, which was then 40 hours in length, and determined that the course content was appropriate. The current VA police officer training course is 66 hours in length.

VI. Safety

Question: 47. How many incidents have there been over the last 3 years where police officers have been injured in the conduct of their duties?

Answer: The data on job-related injuries comes from the Office of Workers' Compensation Programs (OWCP) in the Department of Labor, based on claims filed for workers' compensation. The VA did not break down the OWCP data by occupation until FY 1988. Data from the OWCP files for FY 1988 show that 126 injury claims were submitted by police officers, of which 85 claims reflected time lost from work.

Question: 48. Other than the 3 police officers that were killed while on duty since 1986, what have been the 10 most serious injuries suffered by VA police officers during the last 5 years?

Answer: The nature of the job-related injury claims filed by police officers, that is, whether they were the result of violence or not, is not readily available but could be obtained by a computer search of the files. We would anticipate that it would take at least two weeks to obtain the data. Once again the data is only available from FY 1988.

SENATOR CRANSTON

Question: 49. What specific criteria have been used to approve or disapprove VAMC police officers carrying nightsticks, stun guns or other non-lethal weapons?

Answer: The specific criteria used to approve the carrying of the police baton at medical centers is the ability to document incidents of assaults or threatening behavior against police officers. The use of stun guns has never been approved. The non-lethal weapon that is carried by all VA police officers is the chemical weapon irritant projector (mace). Approval of the use of mace is based upon documenting the successful completion of a three hour training session by an authorized mace weapons trainer.

Question: 50. At which specific VAMCs have police officers been approved to carry nightsticks, stun guns or other non-lethal weapons?

Answer: The use of the police baton has been authorized at the following VAMCs:

Boston, MA
Bronx, NY
East Orange, NJ
Kansas City, MO
Martinsburg, WV
Milwaukee, WI
Oklahoma City, OK
West Los Angeles, CA
Wilmington, DE

As stated earlier, stun guns have not been approved for use and mace is the official weapon for VA police.

Question: 51. What are the respective crime index rates for those VAMCs that have been approved for their officers to carry nightsticks or stun guns?

Answer: The FBI crime index rates for VA medical centers that have been approved for their officers to carry the police batons are as follows:

Medical Centers	FBI Crime Index
Boston, MA	11.7
Bronx, NY	9.1
East Orange, NJ	8.5
Kansas City, MO	12.0
Martinsburg, WV	8.4
Milwaukee, WI	8.3
Oklahoma City, OK	12.8
West Los Angeles, CA	8.8
Wilmington, DE	8.6

SENATOR CRANSTON

Question: 52A. Which of the VAMCs in high crime index areas have not been approved for their officers to carry nightsticks or stun guns?

Answer: The following medical centers in high crime areas have not been approved for their officers to carry the police baton:

- Brockton, MA
- White River Jct., VT
- New York, NY
- Baltimore, MD
- Washington, DC
- Asheville, NC
- Decatur, GA
- Birmingham, AL
- Memphis, TN
- Gainesville, FL
- Miami, FL
- Chillicothe, OH
- Dayton, OH
- Battle Creek, MI
- Chicago (LS), IL
- Hines, IL
- Minneapolis, MN
- Topeka, KS
- Denver, CO
- San Diego, CA
- Fresno, CA
- Portland, OR
- Seattle, WA
- White City, OR
- Little Rock, AR
- New Orleans, LA
- Bonham, TX
- Houston, TX
- Waco, TX
- Tucson, AZ
- Providence, RI
- Brooklyn, NY
- Lyon, NJ
- Ft. Howard, MD
- Richmond, VA
- Columbia, SC
- Biloxi, MS
- Tuskegee, AL
- Bay Pines, FL
- Lake City, FL
- Tampa, FL
- Cleveland, OH
- Ann Arbor, MI
- Saginaw, MI
- Chicago (WS), IL
- North Chicago, IL
- St. Louis, MO
- Des Moines, IA
- Salt Lake City, UT
- Sepulveda, CA
- Reno, NV
- Roseburg, OR
- Walla Walla, WA
- Alexandria, LA
- Muskogee, OK
- Shreveport, LA
- Dallas, TX
- San Antonio, TX
- Albuquerque, NM

A review of the Baton Authorization File maintained by Security Service in VA Central Office disclosed that of the above listed medical centers only VAMC Salt Lake City has requested baton authorization.

SENATOR CRANSTON

Question: 52B. Which of the VAMCs in high crime areas and which in other areas that are using stationary or protable magnetometers have not been approved for their officers to carry nightsticks or stun guns?

Answer: In addition to the medical centers listed above which are those in high crime areas which have not been approved to carry the police baton, the following is a list of medical centers which report having magnetometers and which have not been approved to carry the police baton:

Bedford, MA
Togus, ME
Montrose, NY
West Haven, CT
Wilkes-Barre, PA
Pittsburgh (UD), PA
Marion, IN
Livermore, CA
Northampton, MA
Canandaigua, NY
Northport, NY
Philadelphia, PA
Pittsburgh (HD), PA
Mountain Home, TN
Long Beach, CA
Martinez, CA

According to the Baton Authorization File, none of these medical centers has requested authorization to carry the police baton.

SENATOR CRANSTON

Question: 53. What criteria does a VAMC use to determine whether or not to purchase protective vests for its police officers?

Answer: The procurement and issue of bullet resistive vests is a local management decision. The criteria for its purchase is an assessment that a high possibility exists that officers may be weapon injured at any time during the course of their duties. This assessment is based upon hostile experiences which have occurred and the likelihood that they may recur at any time.

Question: 54. How many VAMCs have purchased protective vests for use by their police officers?

Answer: Sixty-six VA medical centers report having purchased at least one protective vest for use by their police officers.

Question: 55A. Which of the VAMC's in a crime index area of 8.5 or higher have not purchased protective vests for its police officers?

Answer: The VA medical centers located in a crime index area of 8.5 or higher which have not purchased protective vests for its police officers are:

Brockton, MA
Providence, RI
Brooklyn, NY
Washington, D.C.
Fayetteville, NC
Columbia, SC
Biloxi, MS
Birmingham, AL
Tuskeegee, AL
Memphis, TN
Nashville, TN
Bay Pines, FL
Lake City, FL
Miami, FL
Tampa, FL
Battle Creek, MI
Chicago (Lakeside), IL
Chicago (Westside), IL
North Chicago, IL
Fresno, CA
Spokane, WA
Walla Walla, WA
Kansas City, MO
Wichita, KS
Alexandria, LA
Little Rock, AR
Muskogee, OK
New Orleans, LA
Shreveport, LA
Bonham, TX
San Antonio, TX
Albuquerque, NM
El Paso, TX

Question: 55B. Which of the VAMCs using magnetometers have not purchased protective vests for its Police Officers?

Answer: Those medical centers which use hand-held or walk through magetometers and have not purchased protective vests for its police officers are:

Northampton, MA
Providence, RI
San Juan, PR
East Orange, NJ
Bay Pines, FL
Miami, FL
Tampa, FL
New Orleans, LA

SENATOR CRANSTON

Question: 56. At how many of the VAMCs that have purchased protective vests for use by its police officers are some or all of the police officers not wearing the vests?

Answer: Recent reports inicated that at 33 medical centers police officers are not wearing protective vests that were purchased for them.

Question: 57. Once a VAMC has purchased protective vests for its police officers, what is VA's policy regarding the wearing of those vests?

Answer: VA has not established policy regarding the wearing of protective vests. However, the guidance which has been provided to medical centers is that once management makes the decision to procure protective vests, all VA police officers at that medical center are expected to wear them as a uniform item.

Question: 58. Do any VAMCs require their police officiers to wear protective vests that they must purchase themselves?

Answer: Security Service in Central Office is unaware of any instances in which VA medical centers may require police officers to wear protective vests that they must purchase themselves.

Question: 59. What specific criteria has been used to approve/disapprove the use of stationary or portable magnetometers at individual VAMCs?

Answer: Any approval or disapproval of stationary magnetometers is made as a part of the Central Office approval process through the Office of Acquisition and Materiel Management. The criteria used for approval, when reviewed by the Director, Security Service, is whether the medical center can indicate a demonstrated need for the device. An example would be an increase of the number of confiscated weapons. The medical center should also be able to show that the magnetometer(s) can be positioned in such a way as to deter or prevent the weapons introduction. The decision to purchase and use protable magnotometers is left to each medical center which individually determines its needs.

SENATOR CRANSTON

Question: 60. Which VAMCs have stationary or portable metal detectors?

Answers: The following VA medical centers report that they have stationary metal detectors:

Bronx, NY
New York, NY
San Juan, PR
East Orange, NJ
Miami, FL
San Diego, CA
West Los Angeles, CA
Oklahoma City, OK (Not in Use)

The following VA medical centers report that they have portable metal detectors:

Northampton, MA
Providence, RI
Montrose, NY
San Juan, PR
West Haven, CN
Philadelphia, PA
Butler, PA
Pittsburgh (HD), PA
Richmond, VA
Durham, NC
Bay Pines, FL
Tampa, FL
Marion, IN
Chillicothe, OH
Cincinnati, OH
Iron Mountain, MI
Omaha, NE
Ft. Lyon, CO
Long Beach, CA
Los Angeles, CA
San Diego, CA
Sepulveda, CA
West Los Angeles, CA
Martinez, CA
San Francisco, CA
American Lake, WA
Rosebury, OR
Seattle, WA
New Orleans, LA
Phoenix, AZ

Question: 61. At which VAMCs that have or had stationary or portable metal detectors have the metal detectors been disconnected? Why were the detectors disconnected?

Answer: Security Service in Central Office is aware of one medical center which disconnected its stationary metal detector. Oklahoma City, OK disconnected its stationary metal detector because its location at the ambulatory care entrance prevented emergency patients from being brought in without delay.

SENATOR CRANSTON

Question: 62. At which VAMCs that currently have or once had stationary or portable metal detectors has the VACO Security Service determined that the police officers were not properly stopping individuals who activated the alarm on the detectors?

Answer: Information regarding this is not collected in one location. It would take a thorough review of all medical center files (172) to approach an accurate answer to this question. This has not been done. It can be said that the Acting Director, Security Service personally observed that personnel in the security unit at VAMC San Juan were not properly stopping individuals who activated the alarm on the detectors.

Question: 63. Which of the 20 VAMCs experiencing the highest number of introductions of weapons and assaults with dangerous weapons for fiscal year 1988 have not installed stationary or portable metal detectors? For each, why has this not been done?

Answer: Information regarding the number of weapons introduced into medical centers is not collected centrally. Of the 20 medical centers which reportedly have experienced the highest number of assaults with dangerous weapons the following do not report having stationary or portable metal detectors:

Brockton, MA
Perry Point, MD
Tuscaloosa, AL
North Chicago, IL
Muskogee, OK
Fort Howard, MD
Augusta, GA
Lake City, FL
Sheridan, WY

Information regarding why each of these medical centers has not obtained stationary or portable metal detectors is not available. This is because each security unit chief, in conjunction with medical center management, is responsible for determining whether this type of equipment is both useful and practical in carrying out protective responsibilities.

Question: 64. In how many incidents in the past 5 years has the VA police officer used his or her mace weapon with effective results?

Answer: In response to this question and to question number 65, the Acting Director Security Service reviewed reported uses of mace on file in Security Service for the period June 15, 1984 through June 15, 1989. Files disclose that during this period mace was used in 270 incidents in reaction to serious assaultive situations. Medical centers report that mace was effective in 215 of these occasions.

SENATOR CRANSTON

Question: 65. In how many incidents in the past 5 years has the VA police officer used his or her mace weapon with ineffective results?

Answer: Medical centers reported that mace was ineffective in 18 of the 270 incidents. In 37 of the reports there was conflicting information regarding effectiveness of the mace. An example of this is a report that mace was ineffective but in the description of the incident the assailant is reported to have dropped the knife or other weapon immediately after being maced.

Question: 66. Which VAMCs have requested authority for its police officers to carry firearms and which VAMCs have received approval?

Answer: A review of files in the Office of Security Service in Central Office has failed to disclose any instances in which a medical center has requested authority for its police officers to carry firearms.

SENATOR CRANSTON

Question: 67. Three VA police officers have been killed at the Brecksville and Bronx VAMCs since 1986. At both VAMCs, a VA investigation of the killings was undertaken.

67A. What were the specific results and conclusions of the respective investigations?

Answer: A board of investigation into the deaths of two VA police officers at Brecksville, OH, was conducted to determine if policies and procedures related to like incidents are adequate and to review policy related to disposition of information regarding potentially dangerous patients. The board in its report (a copy of which has been supplied to a representative of the Senate Veterans Affairs Committee) came to a number of detailed conclusions. These are summarized as follows:

1) The use of the Stop and Question by the two officers in this instance was not an unreasonable approach.

2) Policies and procedures regarding the summoning and use of local police were not as complete as might be.

3) It was unlikely that either police officer could have avoided being shot whether or not either was carrying a firearm.

4) There was no evidence that the incident occurred as a result of lack of training.

5) One officer would have been killed even if he had been wearing a bullet proof vest. It is inconclusive whether or not a bullet proof vest could have prevented the other officer's death.

6) The shooting of the two police officers does not signal the need to arm all police officers in the system.

A board of investigation into the death of a VA police officer at Bronx, NY, was initiated to determine only whether the slaying of the officer could not or would not have occurred had he been equipped with a firearm. The conclusions are listed as follows:

1) The Board concluded it did not have enough information to determine whether the arming of VA police would have deterred the assailant from using his weapon.

2) The Board concluded that the officer that was killed probably would not have been able to defend himself even if armed with a firearm.

3) The Board concluded that had a second officer, (who came upon the scene during the incident), been armed with a firearm he would have had an opportunity to prevent the killer from firing the last four shots and may have saved the officer's life.

A careful review of this report disclosed that the last conclusion was highly speculative and not supported by the testimony and medical evidence.

SENATOR CRANSTON

Question:	67B. What specific lessons were learned from the respective investigations?
Answer:	In both instances, it was concluded that, under the circumstances, the deaths were not preventable. As a result of the investigation, the need for reinforcement of existing policies and practices natiowide was recognized and initiated.
Question:	67C. What specific actions were initiated at each center and nationwide to prevent future such fatalities?
Answer:	Following the investigation of the deaths at Brecksville, a Chief Medical Director's Letter was issued to all VHS&RA facilities describing the events and reaffirming existing policies governing law enforcement and firearms use. It stressed that when dealing with persons known or suspected to be armed and dangerous, joint VA and local police responses must be pre-planned as to the deployment of officers and the approach of the suspect. The CMD Letter also advised a review of procedures to assure, through local policies, procedures, training and orientation, that VA police alone should not attempt to question or apprehend a person considered or known to be armed and dangerous. The Security Service policy manual was revised by adding the following: "Implement criteria and procedures for promptly requesting the assistance of local public safety agencies in life threatening situations, such as bomb threats, firearm brandishment, hostage taking, etc."

VETERANS ADMINISTRATION
Washington, D.C. 20420

June 25, 1987

INTERIM ISSUE 00-87-11

A. BASIC ADMINISTRATIVE ISSUE AFFECTED: VA Manual MP-5, Part II, Chapter 3, Section C.

B. OTHER ISSUES AFFECTED: None.

C. REASON FOR ISSUE: Authority to approve above-minimum entrance rates and special salary rate ranges for General Schedule health care personnel under 38 U.S.C. 4107(g)(1)(B) and police officers under 38 U.S.C. 4107(g)(1)(C) is being delegated to the Chief Medical Director.

D. TEXT OF ISSUE: MP-5, Part II, Chapter 3, is changed as follows:

Page 3C-2, paragraph 4

Subparagraphs a and b: Delete these subparagraphs in their entirety and insert in lieu thereof:

"a. Chief Medical Director is authorized to approve, adjust, or discontinue rates under this section. The Chief Medical Director shall, not less than 90 days prior to the proposed effective date of the increase, notify the Director of the Office of Personnel Management of the Chief Medical Director's intention to approve such an increase. In addition, the Director of the Office of Personnel Management may disapprove such an increase under the provisions of 38 U.S.C. 4107(g)(4)."

Subparagraphs c through g:

Redesignate subparagraphs c through g as subparagraphs b through f, respectively.

E. RESCISSION: This Interim Issue expires May 31, 1988.

THOMAS K. TURNAGE
Administrator

Distribution: RPC: 1253
SS (731) EX: EO

CHAPTER 3. PAY ADMINISTRATION

SECTION C. ABOVE-MINIMUM ENTRANCE RATES OR SPECIAL SALARY RATE RANGES FOR [CERTAIN] DEPARTMENT OF MEDICINE AND SURGERY GENERAL SCHEDULE [ ] EMPLOYEES

1. SCOPE AND EXCLUSIONS

a. Scope. This section sets forth the policies and procedures governing above-minimum entrance rates or special salary rate ranges for DM&S (Department of Medicine and Surgery) General Schedule employees providing direct patient care services or services incident to direct patient care approved under the provisions of [38 U.S.C. 4107(g)(1)(B). This section also applies to DM&S police officers whose above-minimum entrance rates or special salary rates ranges are approved under 38 U.S.C. 4107(g)(1)(C).]

b. Exclusions. This section does not apply to: (1) [DM&S General Schedule administrative, clerical and physical plant maintenance personnel whose] special salary rates [are] approved by OPM (Office of Personnel Management) under 5 U.S.C. 5303 [and chapter 530 of part I of this manual;] (2) employees compensated under the [Performance Management and Recognition System] (5 U.S.C. 5402); or (3) [DM&S personnel whose above-minimum entrance rates or special salary rate ranges are approved under 38 U.S.C. 4107(g)(1)(A) and section D of this chapter, i.e., physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants, expanded-function dental auxiliaries, board certified clinical or counseling psychologists, licensed physical therapists, registered or certified respiratory therapists and licensed practical or vocational nurses.]

Authority: 38 U.S.C. 210(c)(1), 4107(g).

2. REFERENCES

a. 38 U.S.C. 4107(g).

b. Section 2(d), Veterans' Administration Programs Improvement and Extension Act of 1982 (Pub. L. 97-251).

c. Section 101(a)(1), Veterans' Health Care Act of 1984 (Pub. L. 98-528).

d.] Executive Order 12438, dated August 23, 1983.

3. POLICY

a. Reasons for a Request. Requests may be submitted only to:

(1) Assist in the recruitment or retention of well-qualified employees where there is evidence of recruitment or retention problems which are being caused by higher non-Federal rates of pay;

(2) Provide basic pay in amounts competitive with, but not exceeding, the amount of the same types of pay paid to the same category of [ ] personnel at [comparable] non-Federal [ ] facilities in the same labor market;

(3) Achieve adequate staffing at particular facilities; or

(4) Recruit personnel with specialized skills, especially those skills which are difficult or demanding.

b. Recommendation of Rates. Officials responsible for recommending or approving salary rate determinations (see MP-5, pt. I, ch. 250, par. 12) are responsible for detecting and reporting the need for above-minimum entrance rates or special salary rate ranges.

c. Preconditions. Submission of a request presupposes all recruitment possibilities have been exhausted and full attention has been given to addressing any retention considerations such as working conditions and duty assignments. A request also presupposes sound and effective position management, as well as properly classified positions.

d. Other Limitations

(1) The authority in this section is to be used as a management tool to enable VA to recruit and retain sufficient numbers of capable, well-qualified [ ] personnel. However, pay rates shall not be set at levels above those necessary to meet recruitment and retention needs. The requesting official must carefully examine these needs against recruitment and retention experiences, competitive pay rates, and the available supply of well-qualified candidates to determine whether a request for above-minimum entrance rates or special salary rate ranges would be most appropriate. Typically, a request for above-minimum entrance rates is more appropriate when the staffing problem is primarily one of recruitment. A request for special salary rate ranges is generally appropriate when significant retention or recruitment *and* retention problems are in evidence.

(2) The amount of any increase under this section may not [ ] exceed the amount by which the maximum rate of

such grade exceeds the minimum rate for such grade. The maximum rate for any employee so increased may not exceed the rate paid individuals serving as Assistant Chief Medical Director.

Authority: **38 U.S.C. 210(c)(1), 4107(g).**

4. RESPONSIBILITIES

II 00-57-11 See attached

~~**a. Administrator. The Administrator may approve above-minimum entrance rates or special salary rate ranges, in order to obtain or retain the services of employees covered by this section. However, in the exercise of this authority, the Administrator shall, not less than 90 days prior to the proposed effective date of the increase, notify the President, or designee, of the Administrator's intention to approve such an increase. In addition, the President, or designee, may disapprove such an increase under the provisions of 38 U.S.C. 4107(g)(4).**~~

~~b. Chief Medical Director~~

~~(1) Is responsible for making recommendations to the Administrator concerning requests being considered under subparagraph a above.~~

~~(2) May reduce or discontinue above-minimum entrance rates or special salary rate ranges approved under subparagraph a above whenever it is determined that such rates are no longer appropriate.~~

b ~~c~~. Director, Office of Personnel and Labor Relations will advise management and operating officials on the policies and procedures contained herein.

c ~~d~~. Regional Director

(1) Reviews facility requests for rates under this section to ensure they are consistent with the criteria contained in this section and the Department of Medicine and Surgery Supplement thereto.

(2) May approve a facility's request to use an above-minimum entrance rate or special salary rate as the highest previous rate under paragraph 7c(1)(c).

d ~~e~~. **Medical District Director is responsible for designating a lead facility for the submission of a consolidated request whenever more than one facility in the same labor market would be affected by such a request.**

e ~~f~~. Facility Director is responsible for properly submitting requests under this section and for ensuring that approved rates continue to meet the criteria contained herein. **This includes recommending the reduction or termination of above-minimum entrance rates or special salary rate ranges whenever they are no longer appropriate.**

f ~~g~~. **Personnel Officer at the submitting facility is responsible for coordinating requests submitted under this section with other non-VA Federal agencies in the local labor market which have the same type(s) of personnel for which rates are being requested. This coordination should be done early enough to give local non-VA Federal agencies the opportunity to consider the preparation and submission of a request to the Office of Personnel Management for special salary rates under 5 U.S.C. 5303.**

Authority: **38 U.S.C. 210(c)(1), 4107(g).**

5. SUBMISSION OF REQUESTS

a. Where to Submit. All requests for above-minimum entrance rates or special salary rate ranges for employees under paragraph 1a above are to be submitted to the appropriate Regional Director (10BA__). Incomplete, improperly prepared or inappropriate requests will be returned by the Regional Director without further action. If approval is recommended, the Regional Director shall certify that the facility has correctly estimated the budgetary effect of its request and sufficient funds exist should a request be approved. The request and certification are then to be forwarded through the Director, Resource Management (10A2) and the Director for Operations (10B) to the Director, Office of Personnel and Labor Relations (052) for further action. *(NOTE: Field facilities will not submit requests for special salary rates for DM&S General Schedule [ ] employees [covered by this section] under 5 U.S.C. 5303 unless specifically authorized to do so by the Chief Medical Director or designee.)*

b. Contents of Requests

(1) A request for above-minimum entrance rates or special salary rate ranges should contain enough information for reviewing and approving officials to clearly identify the nature and extent of any recruitment or retention problems, the effect of these problems on the provision of patient care, the role of non-VA Federal and non-Federal salary rates in the local labor market and the effect of any approved rates on the facility's budget.

(2) In unusual circumstances, above-minimum entrance rates or special salary rate ranges may be requested for the reasons outlined in paragraphs 3a(2) through 3a(4) of this section. However, requests under those subparagraphs must be described in detail and contain pertinent supporting information. For example, an unusual situation may occur where filing vacant positions would result in a net

cost savings over excessive premium pay costs, contracting, or fee-for-service alternatives. A request for rates may also be appropriate where a vacancy is affecting the provision of [ ] services, and the small number of employees in the position (one or a few) makes it difficult to base a request on past history of recruitment or retention problems as required by paragraph 3a(1).

(3) Guidelines for submitting requests for above-minimum entrance rates or special salary rate ranges are contained in the DM&S Supplement to this chapter.

Authority: 38 U.S.C. 210(c)(1), 4107(g).

☆ U.S. Government Printing Office: [illegible]

VETERANS ADMINISTRATION
WASHINGTON, D.C. 20420

December 27, 1984

INTERIM ISSUE 00-84-35

(Confirming Teletype Transmission)

A. BASIC ADMINISTRATIVE ISSUE AFFECTED: VA Manual MP-5, Part II, Chapter 3, Sections C and D.

B. OTHER ISSUES AFFECTED: None.

C. REASON FOR ISSUE: To inform field facilities that a general revision of General Schedule or Department of Medicine and Surgery salary rates under 5 U.S.C. 5305 will no longer have any effect on above-minimum entrance rates or special salary rate ranges approved under 38 U.S.C. 4107(g). Thus, any increase of such rates must be approved under VA Manual MP-5, Part II, Chapter 3, Section C, paragraph 4a or VA Manual MP-5, Part II, Chapter 3, Section D, paragraph 5a, as appropriate. This issuance applies to all DM&S General Schedule and Title 38 health care personnel whose above-minimum entrance rates or special salary rate ranges are approved under 38 U.S.C. 4107(g).

D. TEXT OF ISSUE: MP-5, Part II, Chapter 3, is changed as follows:

Page 3C-4, Section C, paragraph 7d, lines 1-4: Delete everything after "increase." and insert in lieu thereof: "A general revision of the General Schedule under 5 U.S.C. 5305 will have no effect on rates approved under this section.

(1) Above-Minimum Entrance Rates. Employees receiving above-minimum entrance rates shall, upon completing the required waiting period on or after the effective date of the general pay adjustment, be advanced to the lowest step rate of the regular rate range which equals or exceeds their current rate of pay. In addition, the employee's eligibility for a within-grade increase shall be reviewed at that time. Assuming an acceptable level of competence, the employee shall be advanced to the next higher step rate of the regular schedule if he or she did not receive an equivalent increase. On promotion, employees receiving the above-minimum entrance rate shall, as a minimum, receive a two-step increase. However, that amount shall be based on the schedule in effect when the above-minimum entrance rate was approved.

(2) Special Salary Rate Ranges. The fact that a special salary rate range may not correspond with the current regular schedule does not interfere with an employee's entitlement to a step increase when due. The employee will receive whatever the pay rate is for the grade and step under the special rate schedule that applies to the employee. Also, other pay administration rules are not affected by the fact that a special salary rate schedule may not correspond with the regular General Schedule.

(3) Termination of Frozen Schedules. An above-minimum entrance rate or special salary rate range is terminated whenever the entry rate or first step of the special salary rate range is lower than the minimum rate of the regular General Schedule rate range for that grade."

Page 3D-4, Section D, paragraph 8d, lines 1-5: Delete everything after "increase." and insert in lieu thereof: "A general revision of pay schedules under 5 U.S.C. 5305 will have no effect on rates approved under this section.

(1) Above-Minimum Entrance Rates. Employees receiving above-minimum entrance rates shall, upon completing the required waiting period on or after the effective date of the general pay adjustment, be advanced to the lowest step rate on the regular rate range which equals or exceeds their current rate of pay. In addition, the employee's eligibility for a periodic step increase shall be reviewed at that time. Assuming an acceptable level of competence, the employee shall be advanced to the next higher step rate of the regular schedule if he or she did not receive an equivalent increase. On promotion, employees receiving the above-minimum entrance rate shall, as a minimum, receive a two-step increase. However, that amount shall be based on the schedule in effect when the above-minimum entrance rate was approved.

(2) Special Salary Rage Ranges. The fact that a special salary rate range may not correspond with the regular schedule does not interfere with the employee's entitlement to a periodic step increase when due. The employee will receive whatever the pay rate is for the special schedule that applies to the employee. Also, other pay administration rules are not effected by the fact that a special salary rate schedule may not correspond to the regular salary schedule.

(3) Termination of Frozen Schedules. An above-minimum entrance rate or special salary rate range is terminated whenever the entry rate or the first step rate of a special salary rate range is exceeded by the minimum rate of the regular salary schedule for that grade."

E. LABOR RELATIONS: Local labor organizations that represent employees affected by this issuance should be informed.

F. PAID INSTRUCTIONS: PAID personnel operating instructions will be issued separately.

G. RESCISSION: This interim issue expires December 31. 1985.

Harry N. Walters

HARRY N. WALTERS
Administrator

Distribution: RPC: 1253
FD

CHAPTER 3. PAY ADMINISTRATION

SECTION C. REQUESTS FOR ABOVE-MINIMUM ENTRANCE RATES OR SPECIAL SALARY RATE RANGES FOR DEPARTMENT OF MEDICINE AND SURGERY GENERAL SCHEDULE HEALTH-CARE PERSONNEL [AND POLICE OFFICERS]

3C.01 FORMAT OF REQUESTS

[Requests for approval or adjustment of above-minimum entrance rates or special salary rate ranges are to be forwarded to the appropriate Regional Director (10BA_/052A) on Office of Personnel Management (OPM) Form 1397, unless requesting officials are advised otherwise by VA Central Office. Instructions for completing Form 1397 are contained in Federal Personnel Supplement 990-2, book 530, subchapter S3-5b and appendix A. NOTE, *however, that cost estimates (item VIII of the OPM Form 1397) are to be prepared in accordance with paragraph 3C.02, notwithstanding the referral in item VIII of the OPM Form 1397 to FPM Supplement 990-2, book 530, subchapter S3-5b for further information.*

Authority: 38 U.S.C. 4107, 4115.

3C.02 COST ESTIMATES

Show the estimated per annum basic salary costs that would result from the proposed rates, assuming all vacancies would be filled. Estimates are to be prepared in the following manner and shall include the information and computations outlined in subparagraph a or b.

a. Above-Minimum Entrance Rates or Above-Minimum Entrance Rates in Combination With Special Salary Rate Ranges. Multiply the number of employees at each grade and step rate affected by the proposed above-minimum entrance rate times the dollar amount of the proposed increase for that grade and step rate (see VA Manual MP-5, pt. II, ch. 3, sec. C, par. 7a, or sec. D, par. 8a(1), if costing rates under sec. D of this chapter). The additional costs for vacancies is determined by multiplying the number of vacancies times the difference between the proposed above-minimum entrance rate and the minimum rate of the grade (or minimum rate of the special salary rate range, if appropriate). Add the above totals.

b. Special Salary Rate Ranges or Adjustment of Special Salary Rate Ranges. Multiply the number of employees (and vacancies) at each grade level affected by the special salary rate range times the amount of the proposed increase for that grade. Add the totals for each grade.

Authority: 38 U.S.C. 4107, 4115.

3C.03 FUNDING

In the letter transmitting the request, requesting officials shall certify that: "The rates proposed are necessary to assist in the recruitment and retention of well-qualified employees. Funds are available locally to cover (insert amount) of the annual costs of salaries and benefits. In addition, centralized funding is requested for the balance (enter amount or zero, if appropriate)."

Authority: 38 U.S.C. 4107, 4115.]

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

SEP 12 1989

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find the Department's responses to questions raised by you following the June 22, 1989, hearing on Agent Orange Compensation, VA Home Loan Guaranty, and Health Facility Security Legislation. Thank you for the opportunity to provide this additional information for the record.

Sincerely yours,

Edward J. Derwinski

Enclosure

QUESTION 1: It is not entirely clear from VA's proposed regulation (amending 38 CFR part 36) on which figure VA is proposing to calculate imputed interest. Does the proposed regulation factor in the imputed interest on the "fair market value" of the home, the "net value" of the home, "total indebtedness," or some other value?

RESPONSE: VA proposes to calculate imputed interest on the fair market value of the property at the time of foreclosure. The fair market value is used as a basis for reduction because it represents the amount VA would pay for a property if the net value formula established by 38 USC 1832(c) were not in effect.

QUESTION 2: Please describe the expenses that VA incurs in conducting a sale of loan-assets with recourse versus a non-recourse sale, in terms of the amount of each expense and who receives any payment for those expenses, such as financial advisers, underwriters, insurers, and loan servicing companies.

RESPONSE: There are no expenses incurred in connection with sales of vendee loans using the recourse procedure in effect prior to June 29, 1988. Using VA's non-recourse sale to American Housing Trust III on February 23, 1989, the costs of a non-recourse sale may be broken out as follows:

Financial Advisor (Kidder, Peabody & Co.)	$	150,000.00
Certificate Insurance Premium	$	4,414,509.00
Trust Fund Expenses (estimate)	$	891,054.60
Underwriting Discount	$	1,317,246.19
Total	$	6,772,809.79

The insurance premium is paid to the American Loan Guaranty Association (ALGA). In turn, a percentage is paid to ALGA's participating members, as follows: AMBAS Indemnity Corporation, 36%; Financial Guaranty Insurance Company, 28%; Financial Security Assurance Inc., 18%; and Municipal Bond Investors Assurance Corporation, 18%.

The Trust Fund Expenses ($891,055) are broken down as follows;

$ 35,682	Brown & Wood - Underwriter's counsel.
6,000	Brown & Wood - New York tax counsel to the Trust.
85,000	Moody's Investor service - Rating fee.
50,000	Standard & Poor's Corp. - Rating fee.
70,465	Bankers Trust Co. - Trustee fees and expenses.

127,908	Aztech Financial Printers - costs of distributing Registration Statement and preparing, printing and distributing Preliminary Prospectus and Prospectus.
8,000	U.S. Bank Note - Cost of engraving, printing and delivering certificates.
195,000	Brownstein Zeidman and Schomer - Fee for serving as counsel to the Trust.
25,000	Brownstein Zeidman and Schomer - To reimburse out of pocket expenses of legal counsel.
50,000	Brownstein Zeidman and Schomer - Costs of preparing closing transcripts.
170,000	Arthur Andersen & Co. - Fees and expenses relating to prospectus review.
18,000	Arthur Andersen & Co. - Fees and expenses of performing up to three monthly audits.
50,000	Miscellaneous.

The underwriting discount ($1,317,246) is paid to the underwriters in varying amounts depending on participation (a breakdown is not available). The underwriters for this sale were The First Boston Corporation (co-lead underwriter); Goldman, Sachs & Co. (co-lead underwriter); Merrill Lynch Capital Markets, Saloman Brothers Inc.; Shearson Lehman Hutton Inc.; Ewing Capital, Inc.; Grigsby, Brandford & Co. Inc.; WR Lazard & Laidlaw Incorporated; and Pryor, Govan, Counts & Co., Inc. A fee is also paid to the Securities and Exchange Commission based on the size of the shelf registration.

QUESTION 3A: What steps is VA taking now to reduce costs in the loan guaranty program?

RESPONSE: With respect to the valuation process, we are currently requiring "as is" foreclosure appraisals (as opposed to "as repaired") at 13 test stations which we believe may indirectly result in cost savings by improving the accuracy of bidding instructions for properties located in "soft" real estate markets.

Also, we are testing an automated system, the Loan Production System (LPS), at three field stations. LPS is a means of meeting present and anticipated workloads by providing for the processing and tracking of appraisal requests and automatic generation of certificates of reasonable value based on the appraisals.

In the area of Loan Processing and credit underwriting, we conduct regular reviews of the credit standards which are the underwriting guidelines used by VA field stations as well as participating lenders.

The Balance Available for Family Support (residual income) tables are adjusted as the need is indicated by statistical data obtained from the Consumer Expenditure Survey published by the Department of Labor's Bureau of Labor Statistics. In addition, field personnel are providing as much training as possible to participating lenders to assure full understanding of VA procedures and credit underwriting criteria.

LPS also provides an automated capability to process loan applications and guaranty requests with a reduction in the manual coding of loan data, record keeping, and file retrieval. The system generates certificates of commitment, guaranty and related correspondence and permits online queries concerning the status of cases in progress.

In connection with servicing and claim payment, VA has implemented a number of initiatives in recent years to reduce costs by cutting down on paperwork and improving the servicing of GI loans. These initiatives include:

1) Folderless processing of defaults. Instead of going back to the loan folder whenever action is taken on a case, default notices and servicing contact records are kept in a binder by each VA loan service representative and serviced from that binder. Loan folders are only ordered and used after foreclosure has begun. (With further modernization, the binders will be replaced by on-line terminals.)

2) Reporting of defaults to credit bureaus. Lenders are now required to report defaults to credit bureaus. This standard industry practice gives the veteran added incentive to reinstate the loan.

3) Combined notice of default and intention to foreclose. When a default is insoluble, lenders can report the default and their intention to foreclose on a single form. This reduces paperwork for both VA and the lender.

4) Tape-to-tape reporting of status reports. Lenders can update VA on the status of delinquent loans without individual (paper) reports on each case which must be reviewed and coded by VA. A computer tape is prepared by VA, updated by the holder, and returned to VA. Currently, this system is used by 3 lenders with a high volume of delinquent GI loans. Others will be added as time permits.

5) Code Sheet Elimination (CSE) is currently being tested at four stations. CSE involves data entry via Wang terminals at the local station. Reject messages are displayed on the screen for immediate correction of data entered directly from source documents by appropriate Loan Guaranty and Finance personnel. The system handles proper formatting of transactions, batching and transmission to Austin DPC on a daily basis. Preliminary results indicate a reduction in reject processing, paper handling, batching, and an improvement in the timeliness of getting data into the system correctly.

6) Reporting of terminations to credit bureaus. Lenders are now required to report terminations to credit bureaus. This, along with default reporting to credit bureaus, provides additional incentive to borrowers to pay their debts. It also will prevent extension of further credit to borrowers who do not maintain their mortgage obligations.

7) Compromise claims. Delinquent veterans are unable to sell their homes in certain markets for enough to satisfy the outstanding debt on their loans. This eliminates one of the best options for avoiding foreclosure. We have emphasized the use of compromise claims (where VA may pay the difference between the sale proceeds and the loan balance, and thus reduce the amount of the claim which would otherwise be payable if foreclosure were necessary) and modified this procedure to include cash sales as well as assumption sales.

8) Deed in lieu of foreclosure with repayment. Many field stations were reluctant to approve a deed in lieu of foreclosure when the veteran had an apparent ability to repay some of VA's loss. Our deed in lieu requirements have been modified to permit acceptance of a deed in such cases if the borrower agrees to remain liable for part of the claim paid by VA.

9) Refunding with reduced interest rate. Stations are now authorized, when refunding loans to assist veterans in avoiding foreclosure, to reduce the interest rate on the loan to as low as 3 percent below the prevailing GI rate if this will allow the veteran to qualify for such refunding.

10) Lender orders foreclosure appraisal. Lenders now order foreclosure appraisals directly from the fee appraiser (after receiving the appraisal assignment from VA). This has reduced paperwork by eliminating the need for VA to order these appraisals, and should improve VA's ability to get net value advice letters to lenders before scheduled sale dates.

11) Lender servicing requirements have been clarified to specify that lenders must give veterans written notice within 20 days of a default, and such notice must be followed up with an attempt at personal contact by telephone. Also, if no repayments are made, a face-to-face interview with the veteran must be attempted prior to foreclosure.

12) VA computer-generated servicing letters have been amended to include a detailed description of the various options available to VA, lenders and veterans which would assist veterans in reinstating their loans or avoiding foreclosure.

For property management purposes, the issue is not one of cost reduction, rather, it is one of maximizing the recovery of the value of an asset. The goal of VA's property sales program continues to be that of obtaining the best prices for acquired properties within a reasonable period of time. In order to reduce the losses associated with the sales program, VA regional offices were recently advised to review their individual property sales programs in the following areas:

1) Pricing--All pricing is to be based on a comprehensive market analysis of the condition of the individual properties, the prices at which comparable properties are selling, and the terms on which VA properties and competing properties are offered for sale.

2) Trading Margins--At station discretion, offers within a "reasonable" range (i.e., the trading margin) of the list price may be considered for acceptance. Stations are currently required to consider reasonable offers below list price on properties which have been on the market for more than 90 days and may, at station discretion, establish trading margins for properties from the date of the initial listing. The maximum trading margin authorized is 15 percent of the stated list price. All stations were recently requested to review their trading margin practices to assure that the minimum trading margin percentages needed to effect timely sales are being established.

3) Cash Discounts--VA's current obligation is to make 35 to 50 percent of its property sales for cash. To be certain that the requirement could be met, stations were previously authorized to offer discounts of as much as 20 percent on cash sales. Similar to the trading margin, the 20 percent figure is a maximum only; lower percentages may be applied on a property-by-property basis. Current field station practices have produced 49 percent cash sales during FY 1989 (through June). In view of this, stations are not authorized to use a discount of more than 10 percent through the remainder of FY 1989.

4) Repairs--The experience of some investors who specialize in the purchase and rehabilitation of foreclosed properties suggests that they often recover considerably more than their investment in a property by first restoring it to habitable, move-in condition. VA regional offices were advised recently to consider repair programs in appropriate cases if such programs can be feasibly accomplished prior to marketing. However, if repairs can not be completed prior to marketing, regional offices are advised to offer rehabilitation loans to encourage buyers to offer better prices for properties.

5) Purchase Offers--The receipt of multiple purchase offers in response to a particular listing ordinarly suggests that offerors have identified a bargain-priced property. In that regard, the routine receipt of multiple purchase offers on a substantial number of listings may indicate that list prices are being set too low. Regional office personnel are advised that in these instances, a closer review of comparable market sales may be in order.

6) Quality and Timeliness of Services--Buyers and brokers are particularly attracted to properties offered for sale by sellers who provide timely and effective service. Service factors include: accurate and timely notice of what properties are available for sale; timely notice of the acceptance of offers; timely processing of loan applications; and timely sales closings. The best prices can be expected to be achieved when properties are exposed to the greatest number of prospective purchasers, and this widest exposure can be achieved by providing timely services at least equal to that being offered by the competition. Each regional office is directed to reexamine the procedural aspects of their sales programs to assure that the procedures for buying a home from VA are competitive with the procedures offered by other sellers of acquired properties.

QUESTION 3B. What cost-reduction steps do you plan to take in the future?

RESPONSE: With respect to the valuation process, we intend to require "as is" foreclosure appraisals nationwide. In addition, when LPS is fully implemented, savings will be achieved by eliminating manual record keeping and data retrieval as well as by system generation of documents and correspondence.

With respect to Loan Processing, full implementation of LPS will achieve nationwide savings similar to those seen at the test stations.

With respect to servicing and payment of claims, VA has several initiatives underway which should further reduce costs by streamlining field station work processes and improving the quality of VA personal supplemental servicing and primary servicing by loan holders:

1) Pre-foreclosure waivers. A proposed change to 38 CFR 36.4323 would allow Loan Guaranty to provide veterans with pre-foreclosure waivers or compromises of VA's anticipated losses in connection with GI loans that are about to be foreclosed. With a possibility of pre-foreclosure waiver, veterans in financial distress would be more willing to assist in completing the termination of the loan in the most economical manner. Therefore, the number and size of debts established could be reduced. In addition, their collectibility should be increased since the veteran and VA will have agreed that the amount of debt and the repayment terms are reasonable before the debt is established. Committee on Waiver and Compromise workload would be reduced, as would the dollar amount of claims paid by VA and liability accounts receivable.

2) Conveyance/reconveyance procedures. A DVB Circular was released last month which advises holders VA will only accept conveyance of properties if a complete title package is received within 60 days of the foreclosure (longer periods will be permitted in states where 60 days is not practicable) or if there is a legitimate reason for delay and VA is notified and agrees to waive the 60 day limit. The Circular also instructs field stations to accept a standardized package of documents to evidence acceptable title. In addition, we are drafting changes to VA regulations which will incorporate a deadline for submission of title evidence and require that properties be vacant as a condition for title acceptability.

3) System modernization. Upon completion of the VBA system modernization effort, most default reporting and status updating will be handled electronically--this will eliminate the need for time to be spent at field stations in manual coding or data entry. VA loan servicers will be able to contact borrowers and handle incoming calls using account data available at their work stations on a terminal, in much the same way as private sector servicers. Servicing notes, and actions, will be entered directly at the work station.

4) Servicing Regulations. A recent audit by the Office of the Inspector General recommends that VA establish servicing requirements by regulation. This recommendation was discussed with the IG audit team at the draft stage and we agreed to consider such action. Field station Loan Guaranty staff have

expressed increasing concern over a decline in the quality of servicing and the establishment of applicable regulations appears to offer promise with respect to improving holder servicing. Proposed regulations are being drafted.

QUESTION 4A: Typically, how many cases does a VA loan counselor handle at a time?

RESPONSE: For the quarter ending March 31, 1989, workload amounted to approximately 782 cases (GI defaults and portfolio loans) per loan servicer (in addition to other responsibilities which servicers have).

QUESTION 4B: How does a counselor decide to which of these cases he or she should devote the limited time available for counseling?

RESPONSE: Many of the operations of the Loan Servicing & Claims Section must be performed regardless of the number of available FTE (i.e., there is little workload flexibility since certain tasks are necessarily given priority in order to maintain tax and insurance payments and general servicing on portfolio loans, process foreclosure correspondence and coding, issue net value advice promptly, pay claims and property acquisitions, process loan sales, etc.). As a result, those operations which are not part of the priority workflow will suffer. This means that supplemental servicing of GI loans will necessarily take a back seat when workload increases or FTE decreases. Aside from the availability of time to allot toward servicing, the type, quality, and priority given to various servicing activities and foreclosure alternatives depends largely on the training and supervision of the loan servicers, and on the specific situation in each case. We have addressed this issue by providing field stations with system output which identifies seriously delinquent GI loans and gives their current status and the date our record was most recently updated; for portfolio loans, monthly output identifies accounts by the number of months each account is delinquent. Training in alternatives to foreclosure was provided to all Loan Service and Claims Section Chiefs at a one week conference held in March of this year. It was also included in a one week training program for newer Loan Service Representatives held in July of this year--this program will be repeated in August.

QUESTION 5: I am very pleased that VA has decided to support the provisions in section 5 of S. 1158 and section 7 of H.R. 1415 requiring lenders to notify VA of their refusal to accept a tender of a partial payment by a veteran. As you know, this provision is aimed at helping loan counselors better identify veterans who may be able to cure default.

QUESTION 5A: Do you agree that homeowners who try to pay at least some significant portion of their mortgage bill are more likely, in the long run, to avoid foreclosure than those who do not make such attempts?

RESPONSE: Yes.

QUESTION 5B: Please describe how loan counselors could use the information that this provision would make available to VA in carrying out their statutory duty to assist veterans to avoid foreclosure.

RESPONSE: We anticipate a substantial volume of reports of returned partial payments, especially in cases where the default is not yet reportable to VA. The required report will allow VA to establish loan defaults in our system and begin outreach to veterans much earlier than is currently the case. Where a lender declines to accept partial payments but should have accepted them under the prevailing regulation (38 CFR 36.4315), VA can intervene on the veterans' behalf and request that such payments be accepted. If acceptance of the returned payment would not be required under the regulation, knowledge that the veteran had made a good faith effort to make a partial payment will provide VA with an indication of the amount of funds the veteran has available and of his or her attitude toward the loan default. This information should be useful for supplemental servicing purposes. It is important to point out that the potential benefits of this proposal will only be realized if there is a proper balance between the increased workload that will result and available staffing in the VA Loan Guaranty operation around the nation.

QUESTION 6: The National Association of Home Builders, on page 8 of its written testimony, states that the fund created under S. 1158 would be subject to the sequestration provisions of the Gramm-Rudman-Hollings Deficit Reduction Act. It seems to me that section 113(a)(6) of title 38, U.S.C., clearly would provide an exemption from sequestration for the new fund. Do you agree?

RESPONSE: Yes

QUESTION 7: The Peat Marwick analysis of H.R. 5221, the predecessor to H.R. 1415, stated, "If an upfront funding fee was the only source of funding available, a fee which varied from 1% to 4.5% based on loan-to-value would be required for the New Fund to be self-supporting..." Given a maximum guaranty amount of $36,000 and assuming the highest percentage fee requirement projected by Peat Marwick, a fee of 0.125 percent for each $1,000 of guaranty would provide for a self-supporting program. Section 4 of S.1158 would allow veterans to purchase optional additional entitlement, up to $10,000, for a fee of 0.1 percent for each $1,000. Even assuming the worst-case scenario in the generally pessimistic Peat Marwick study, then, would not the optional-additional-entitlement provision in S.1158 essentially be self supporting?

RESPONSE: A $10,000 entitlement increase above the current $36,000 maximum would mainly assist first time veteran homebuyers obtaining loans in excess of $144,000 who have insufficient cash assets for a downpayment. Qualified veterans could obtain a no downpayment loan up to $184,000 assuming GNMA made the appropriate adjustment in their downpayment/guaranty requirement ($46,000 x 4 = $184,000).

Under a general entitlement increase of $10,000 to all veterans VA's guaranty liability would rise on all loan amounts above $90,000, e.g., on a $100,000 loan to a first time home buyer the guaranty is $36,000 or 36 percent. With a $46,000 maximum entitlement VA's guaranty would be $40,000 or 40 percent. VA's contingent liability would increase and in certain cases VA would pay the lender the full guaranty amount (no bid) in excess of the current $36,000 maximum. In the event of serious economic difficulty characterized by heavy foreclosures and a sharp decline in property values, e.g., Texas, additional liability by VA on those higher loan amounts could result in significant losses to the Government.

However, in a more stable "normal" environment we would expect a very low foreclosure rate on the group of loans above $90,000. Most likely the foreclosure rate would be less than 3 percent in any origination year. At this foreclosure level the current one percent funding fee would produce sufficient income to offset losses from foreclosures on these loans.

EXAMPLE:

One hundred veterans obtain no downpayment loans for $184,000. Each loan is guaranteed by VA for $46,000. The veterans each paid a one percent funding fee or $1,840.

Funding Fee = $184,000 (100 x $1,840)

Three loans go to foreclosure and VA suffers its maximum loss on each loan $46,000.

TOTAL LOSS = $138,000

At the 3 percent foreclosure level VA would not incur an overall loss. A 4 percent foreclosure rate produces the break even point, i.e., 4 x $46,000 = $184,000.

However, it is unlikely VA would suffer the maximum loss in each case. Therefore, the foreclosure rate would have to exceed 4 percent on this group of loans before VA would experience a loss.

In this same example, had veterans paid an additional one percent fee for the extra $10,000 entitlement, the foreclosure rate would have to exceed 8 percent before VA would experience a net loss.

SUMMARY

Under stable economic conditions the additional $10,000 entitlement provided to all veterans, or purchased as an option, would not increase cost to the government. However, under the straight increase of entitlement the government becomes more vulnerable to loss in the event of severe economic downturn because loan amounts between $90,000 and $144,000 would carry higher government guaranty. This higher guaranty is not necessary to induce lenders to provide financing.

The additional fee income from purchased entitlement would provide a source of revenue to offset losses from foreclosures on lower loan amounts.

QUESTION 8: Section 2(c) of S. 1158 would deny indemnification to individuals whose default resulted from "circumstances not beyond the individual's control." Please provide examples of circumstances of defaults that you would consider as falling within or outside this provision if it were enacted that would not also constitute "fraud, misrepresentation, or bad faith... in connection with the loan default" under the prior clause of the same provision.

RESPONSE: "Bad faith" and "control" are judgment matters which will require exercise of discretion by VA. We can suggest several examples in which bad faith is not present but VA is required to pay a claim as a result of circumstances which were not outside the veteran's control. A veteran who allows his or her loan to be assumed without obtaining a release of liability from VA may not have acted in bad faith in consenting to the sale but, in the event the transferee is not credit-worthy and defaults on the loan, VA may incur a loss which would not have been suffered if the veteran had exercised his or her right to refuse to sell unless the transferee qualified for the loan and a release of liability had been obtained. A veteran who willfully withholds mortgage payments because of a dispute with the lender may believe he or she is acting in good faith but, in the event the money is subsequently spent for other purposes and the account cannot be reinstated, VA may pay a claim even though the veteran could have avoided foreclosure by continuing to make payments pending resolution of the disagreement. A veteran who moves, possibly to take advantage of a job promotion, and leaves responsibility for selling the property and certified correct. Closing papers are then sent to HUD Headquarters Accounting, where wire proceeds are matched against closing packages.

HUD Vulnerabilities. While full investigations are not completed, HUD personnel advise us that the reported instances of sales proceeds retained for personal use by closing agents are principally traceable to lack of follow-up by field office personnel. Field office property managers were the sole control point. If they did not conscientiously follow-up on non-received closing papers, their centralized accounting system did not detect the non-receipt of funds.

The VA System. Approximately 50% of VA sales are for "cash", i.e., without seller financing. (There is little vulnerability in the other 50% vendee, or seller-financed, sales. Vendee sales are usually closed by selling brokers, there is generally not more than a 3% downpayment in liquid proceeds at the closing, and the broker does not receive the 6% sales commission until the closing documents and downpayment are received and reviewed by the regional office). Closings of "cash" sales are conducted by closing agents selected by the buyers and their lenders. While the details of the closing are not directly controlled by VA, a prospective closing date is entered in VA's Property Management System (PMS), as well as in supplementary local personal computer systems, and follow-up messages are produced to alert regional office personnel when a closing date has passed without the receipt of sales proceeds. These reports are principally used by the technicians responsible for the sale of the property to follow-up with closing agents. Supervisory personnel, and often Finance officers, are able to use the reports to check on the follow-up actions of the technicians.

Based on special reviews just completed by our regional offices, VA had only 7 "cash" sales in which proceeds had not been received in the 30 days following the sales closings. Appropriate follow-up action had been taken in the 7 cases. The total sales proceeds involved was approximately $175,000.

VA Vulnerability. VA has not encountered a problem similar to HUD's, and has lower dollar vulnerability due to both lower numbers of sales and to the current 50% limitation on "cash" sales. All proceeds are controlled at the regional office level - the same point to which closing packages (documents) are returned. The variety of closing agents selected by assorted "cash" purchasers may also serve to lessen vulnerability, since none probably perform enough VA closings to detect any systematic weaknesses which might occur in the to a real estate broker would not be acting in bad faith; however, if the property is not sold and foreclosure results, VA may pay a claim which could have been avoided if the veteran had not moved or had delayed the move until the property had been sold. A veteran who is unable to maintain the mortgage obligation because of a decline in income or a transfer of duty station, and unable to sell the property because market values have declined, may offer a deed in lieu of foreclosure in good faith; however, if the deed cannot be accepted because the veteran has incurred other obligations which lien the property, he or she should be held responsible for the consequences of those actions (incurring excessive obligations) which were under his or her control.

QUESTION 9: The Department of Housing and Urban Development recently has experienced massive fraud, malfeasance, and abuse in several of its programs--most notably the Section 8 Moderate Rehabilitation Program (MRP). Much of this fraud occurred in connection with the escrow agents that participate in the MRP.

QUESTION 9A. Please describe (i) the similarities and differences between the HUD and VA programs with respect to these HUD abuses; and (ii) the safeguards VA has implemented or plans to implement to prevent similar or other abuse in the VA guaranteed loan program, the VA vendee loan program, and other VA home loan activities.

RESPONSE: VA's home loan program is similar to FHA's 203B program--both rely on private lenders to make loans. One is an insured program and one is a guaranty program. VA has no subsidized housing program similar to HUD's Section 8 program.

All HUD property disposition sales are for "cash", i.e., there is no seller-financing. At stake in each closing are the liquid net sales proceeds (the sale price, less broker's commission and agreed closing costs). Closings generally are conducted by a HUD-designated closing agent, although buyers and their lenders may select an independent agent. From HUD, the agent receives the deed to the property and a copy of the sales contract. The agent sets a closing date and prepares the closing papers. From the buyer and new lender, the agent receives a check for the amount due to HUD. This check is deposited by the agent in its own escrow account (non-interest bearing, according to the contract). The agent is to pay the broker's commission from the amount of the proceeds and then to wire the balance to a central HUD account (not to the field office) on the next business day. Executed closing papers are returned to the HUD field office, where they are reviewed

VA system. However, while VA has effective computer systems in place to monitor sales where VA has not been paid, VA shares HUD's vulnerability to human failures to use those computer systems for various reasons.

We recognize that VA's property sales program involves large sums of money and operates with a significant dependence on the private sector which has a financial interest in each transaction. However, specific program guidelines, plus existing control systems to ensure compliance with these guidelines and to permit monitoring of the actions of program participants, have enabled VA to successfully forestall serious and widespread fraud and abuse of the program. To ensure that such potential for fraud and abuse remains at a low or moderate level and that actual instances are minimized, all personnel involved in the property sales program, both management and staff, are reminded, as necessary, of existing controls and cautioned that there must be continued and appropriate oversight of the program. In that regard, we expect to issue a release to all VA regional offices within the next 20 days to reemphasize the vulnerability of the sales closing aspect of the property sales program to fraud and abuse.

QUESTION 9B. Please list any audits or investigations by VA, the VA Inspector General, or others that address these issues and provide the Committee with copies of the reports of any such audits or investigations.

RESPONSE: To our knowledge, there are no reports or audits addressing the program's susceptibility to fraud or abuse in this area.

QUESTION 10: The National Association of Home Builders, on page 9 of its testimony, asserts that many States have "anti-deficiency laws" that prohibit deficiency judgments against borrowers who already have lost their homes through foreclosure. Please comment on the accuracy of NAHB's contention regarding State indemnity provisions and the status of the law on whether such provisions preclude VA from pursuing veteran-borrowers for losses VA incurs as a result of defaults.

RESPONSE: We are aware of three states where deficiency judgments are not available under any circumstances; Arizona, California and Oregon. Other states permit deficiencies under certain circumstances, depending on which type of foreclosure procedure is used, what type of loan instruments are involved, what length redemption period is requested, etc. By regulation, the veteran agrees to indemnify the Government for any loss sustained on the loan. In 1961, the Supreme Court, in the Shimer decision, upheld VA's indemnity regulation, and further held that this regulation suspersedes inconsistent State law. VA is currently defending a number of suits, including seven class actions, which challenge VA's interpretation of the indemnity regulation. The Government's position has been upheld by the Federal District Courts in San Francisco, California, Portland, Oregon, and Salt Lake City, Utah. The Federal District Court in Seattle, Washington, however, has ruled that VA is subject to a Washington state law which denies a lender a deficiency following a nonjudicial foreclosure. The decisions in the Washington State and California class actions are currently on appeal to the United States Court of Appeals for the Ninth Circuit. We understand that plaintiffs' deadline for appealing the Oregon decision is August 25, 1989.

THE DEPUTY SECRETARY OF VETERANS AFFAIRS
WASHINGTON

DEC 27 REC'D

DEC 22 1989

Honorable Alan Cranston
Chairman, Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed you will find responses to additional questions you submitted following the June 22, 1989 hearing on Department security practices.

As you know, we are now working out the details of creating the position, Deputy Assistant Secretary (DAS) for Security, to oversee a broad Departmentwide security program. I have asked the Assistant Secretary for Human Resources and Administration, in conjunction with this realignment, to review the security program and outline an implementation plan to make it more integrated and effective. The enclosed responses were prepared before the decision to elevate the security function, so statements of opinion or judgment may not accurately reflect the outlook or policy approach that will ultimately be adopted. Nevertheless, the information in the enclosure is extensive, and at least the historical and factual material should be helpful.

I will keep you informed as our plans to create a more effective security program progress. Your strong support is greatly appreciated.

Sincerely yours,

Anthony J. Principi

Anthony J. Principi

Enclosure

[Attachments referred to in answers are retained in the committee files.]

SENATOR CRANSTON

Question: 1. The June 21, 1989, VA response to question 2 states that, based on available information, VA does not have a large number of police officer vacancies, and that most vacancies are filled on a timely basis (emphasis added).

Question: 1A. What information is available on police officer vacancies?

Answer: We do not maintain current vacancy information on positions which field facilities have authority to fill. However, many facilities which experience recruiting difficulties list their vacancies in VA Recruitment Bulletin, a nationwide employment opportunity listing.

Question: 1B. From this available information, how many police officer vacancies exist at present?

Answer: Eight facilities list a total of 20 police officer vacancies in the August 1989 VA Recruitment Bulletin.

Question: 1C. Please provide a copy of the available information.

Answer: A copy is attached. (Attachment 1)

Question: 1D. Is it feasible for VA to undertake an expeditious survey of vacant police officer positions nationwide?

(i) If so, please undertake such a survey and provide the results.

(ii) If it is not feasible, please explain why it is not.

Answer: A survey is feasible. We will request a special report from each facility. We anticipate that it will take at least 60 days to provide the results.

Question: 2. VA's response to question 3 states there are two staff persons in VACO Security Service. For each of the last 5 years, how many staff have there been in the Service?

Answer: Staffing was reduced from four persons to two persons in 1985 and has remained at a level of two persons since that time.

Question: 3. VA's response to question 7 states that an analysis was done in November 1988 which revealed the need for increased staffing in VACO Security Service.

A. Who conducted the analysis?

B. Please provide a copy of the analysis.

Answer: Staffing analysis was conducted by the former Director, Security Service, Mr. James G. Fasone. A copy of the staffing analysis is provided as Attachment 2.

Question: 4. VA's response to question 6B states that VACO Security Service staffing will be reviewed within 120 days following the appointment of the new Director. To the extent that it is known that additional staff is needed (per VA response to question 7), why must an increase in staffing await the appointment of that new Director?

Answer: Since that analysis was conducted almost a year ago, other issues have been raised by recently released IG audits. Consequently, although the need for additional staffing remains, the type and extent of the additional staffing needed may have changed since that analysis was completed. We believe that it will be in VA's best overall interest to give the new Director of Security Service the opportunity to evaluate the audit findings, to make his own determination of what his needs are, and to participate in any discussion prior to a final decision by upper management. A nominee for the position has been approved by OPM and will begin his position on October 8, 1989.

Question: 5. VA's response to question 8B states that VACO Security Service reports through two officials to the Chief Medical Director. Who are these two officials?

Answer: The Director, Security Service reports to the Chief Medical Director through the Director of Administration and the Associate Deputy Chief Medical Director.

Question: 6. VA's response to question 10 states that 20 security programs have been found to be operating unsatisfactorily in some aspect of their operations.

6A. Please identify these 20 programs and the aspects found to be unsatisfactory.

6B. For each, identify the time period during which the unsatisfactory performance was found.

Answer: The response should have been that 20 security programs were found to be operating in a generally unsatisfactory manner. Those medical centers and the dates are as follows:

San Juan, PR	12/87	Durham, NC	10/88
Charleston, SC	12/88	Dublin, GA	8/88
Indianapolis, IN	1/80	Iowa City, IA	5/89
N. Chicago, IL	1/89	Columbia, MO	4/89
Battle Creek, MI	3/84	Dayton, OH	2/82
Cincinnati, OH	3/83	St. Louis, MO	5/83
Allen Park, MI	12/79	Saginaw, MI	5/76
Grand Island, NE	3/79	Marion, IN	10/84
Kansas City, MO	10/80	Fresno, CA	2/89
Houston, TX	3/87	San Francisco, CA	10/86

The aspects involved in determining that a program was unsatisfactory vary significantly among those facilities evaluated. The above list was compiled by verbally contacting Regional Security Officers. We have searched Central Office files and are supplying you with the available program evaluations as Attachment 3.

Question: 6C. For each, please provide a list of corrective actions that have been taken.

Answer: We are attaching the available responses from the medical centers which include the corrective actions planned or taken as Attachment 4.

Question: 6D. For each, identify when a follow-up evaluation was conducted and the results of that evaluation or when a follow-up evaluation is planned.

6E. Please describe VACO Security Service's policy for conducting a follow-up evaluation when a program evaluation determines that a security program is operating unsatisfactorily.

Answer: Although we would like to do so, no follow-up evaluations have been conducted at any of these medical centers since these evaluations were conducted. Due to limited resources and the need to conduct evaluations at medical centers never evaluated, no policy of conducting follow-up evaluations on unsatisfactory programs has been developed. Once we have conducted program evaluations at all or most medical centers never evaluated we will concentrate our efforts on re-evaluating those medical centers which appear to have the most need. One of the more significant criteria for determining that need will be that a security unit was previously found to be operating in an unsatisfactory manner.

Question: 7. VA's response to question 12 states that there are 33 VAMC security units that have at least 1 detective on staff. Please identify these 33 centers.

Answer: There are presently 32 medical centers who have detectives on their staff. The following is a list of medical centers and the number of detectives presently on staff:

Albuquerque, NM (1)
Allen Park, MI (1)
American Lake, WA (1)
Bay Pines, FL (1)
Big Spring, TX (1)
Birmingham, AL (1)
Boston, MA (1)
Brooklyn, NY (1 vacant)
Chicago (LS), IL (2)
Chillicothe, OH (1)
Cleveland, OH (1)
Columbia, SC (1)
Dallas, TX (1)
Dayton, OH (1)
Hampton, VA (1)
Hines, IL (5)
Wilkes-Barre, PA (1)

Indianapolis, IN (1)
Kansas City, MO (1)
Long Beach, CA (1)
Memphis, TN (1)
Miami, FL (1)
Milwaukee, WI (1)
Montrose, NY (1)

New York, NY (1)
N. Chicago, IL (1)
Northport, NY (1)
Pittsburgh (UD), PA (1)
Portland, OR (1)
Temple, TX (1)
West Los Angeles, CA (5)
Washington, DC (1)
Wilmington, DE (1)

Question: 8. The 1989 Inspector General (IG) report on VA Security Service Operations (9R6-A99-077) is based on an audit of 8 VA medical centers -- West Los Angeles; Brooklyn; Hines; Tuscaloosa; Oklahoma City; New Orleans; Philadelphia; and Lakeside. At each, the IG determined that improvements were needed in investigating crimes, suggesting the need for a detective or more detectives on staff.

8A. Do each of these 8 VA medical centers have at least 1 detective on staff? If not, why not?

Answer: Of the 8 identified medical centers, only three have full time detectives on their staffs. The remaining 5 medical centers were queried to determine how investigations are assigned. The following are responses received:

Oklahoma City - the medical center has no detective,therefore, the assistant chief is assigned investigative duties.

New Orleans, LA - the medical center has an acting detective and has requested medical center management that this position be made permanent. In the past, the assistant chief has been assigned investigative duties.

Brooklyn, NY - this medical center does have a vacant detective position. The medical center intends to begin recruiting to fill this vacancy.

Philadelphia, PA - this medical center does not have a detective position. There are plans to request a detective position in the near future. Investigative assignments are presently rotated among officers at that facility.

Tuscaloosa, AL - this medical center does not have a detective position. The chief of security plans to request a position in the near future. Investigative assignments are rotated among the officers at that facility.

Question: 8B. Based on this IG report, it seems that inadequacies in investigating crimes is a common problem. To the extent that is true, what specifically has VACO Security Service done to identify VAMC security units elsewhere which also need a detective or detectives on staff? If nothing has been done, why not?

Answer: VACO Security Service has not conducted a systematic study to identify VAMC security units that need a detective or detectives on staff, although individual evaluations may have been made as a part of program evaluations conducted by Regional Security Officers. Any study of the need for increased staffing, to include the need for a detective, is properly accomplished by the individual medical centers. It is not a part of the function of VACO Security Service to do so.

Question: 9. VA's response to question 14A states that a Regional Security Officer concluded that the IG findings on security service staffing levels at the West Los Angeles VAMC were not accurate.

9A. What specific conclusions were reached by the Regional Security Officer regarding this matter?

Answer: The Regional Security Officer met with the new Security Service Chief shortly after his arrival. After interviewing the new Chief and evaluating the present work load of the detectives, the frequency of incidents of criminal activity and the potential for future activity based upon the high crime rate of the surrounding community, he concluded that the present number of detectives was not excessive as the IG indicated.

Question: 9B. Please provide a copy of the Regional Security Officer's report, memorandum, or other information documenting these conclusions.

Answer: The Regional Security Officer reported the findings of the review to the Acting Director, Security Service, VACO by telephone. There is no written report which documents the conclusions.

Question: 10. In reply to question 14B, VA said VACO Security Service regularly reviews staffing levels at VA medical centers.

10A. Through what formal mechanism is this review done?

Answer: The Director, Security Service receives quarterly personnel listings of police officers. There is no "formal mechanism" for these reviews. In addition to the informal reviews conducted by VACO Security Service, Regional Security Officers formally review staffing problems and levels as a part of their program evaluations and informally as a part of their regular phone calls to medical centers. Discrepancies noted during the program evaluations are reported to VACO in their program evaluation reports. Each medical center is then required to respond to the reported findings with intended corrective actions.

Question: 10B. Please provide the results of the 5 most recent such reviews.

Answer: There are no reports resulting from the reviews by the Director, Security Service. Examples of results of program evaluations can be found among the Attachments provided as a part of the response to question 6C.

Question: 11. In reply also to question 14B, VA said that Regional Security Officers discuss staffing levels during program evaluations.

11A. What specific items in the program evaluation deal with the adequacy of staff size?

Answer: Item number one under Section C - OPERATIONS, addresses the issue of minimum staffing requirement of one officer on duty at all times General Medical and Surgical (GM&S) centers) and at least two officers at neuro-psychiatric centers. During this part of the evaluation process, staffing problems are addressed.

Question: 11B. Is the program evaluation designed to reach a specific determination regarding the adequacy of staff size? If not, why not?

Answer: The program evaluation guide is designed to identify if minimum staffing is present at a medical center at all times. Staffing above that which is required must be based on a detailed staffing needs assessment conducted by the chief of individual security units and the availability of funds to support identified staffing needs.

Question: 12. For the 20 VAMCs with the highest recorded number of criminal acts committed in FY 1988:

12A. Would it be feasible to require those 20 VAMCs to reduce the number of criminal acts committed by some established percentage during the following fiscal year? If not, why not.

Answer: Since the number of criminal acts occurring in any jurisdiction is normally caused by many factors over which that jurisdiction (city, town, Federal installation) may have little control, such as the nature and size of the population in the surrounding area, we do not believe that such an approach is feasible.

Question: 12B. Does VACO Security Service target its program evaluations to include, specifically, those VAMCs with the highest recorded number of criminal acts? If not, why not? If yes, when, for each of the 20 VAMCs, was a program evaluation last conducted and when is the program to be reevaluated?

Answer: The criminal activity at a particular medical center is but one of the factors used to determine the need for conducting a program evaluation. If a medical center is experiencing a significant increase in the amount of criminal activity it may be more appropriate to provide that medical center with investigative assistance.

Question: 13. VA's response to question 19 states that it is acceptable to have one police officer on duty at smaller, non-psychiatric medical centers during times when the total population is less than about 500.

13A. Which VAMCs have only one police officer on duty for any particular duty shift?

(i) For each of those VAMCs identified, please explain why having one police officer on duty is consistent with VA policy.

(ii) For each of those VAMCs identified where having one police officer on duty is not consistent with VA policy, please explain why a deviation from VA policy is permitted or, alternatively, what changes in staffing are planned.

Answer: Security Service in Central Office does not maintain information on the number of police officers on duty at medical centers during particular shifts. This is because staffing levels and assignments change regularly and because decisions regarding such levels and assignments are made at the individual medical centers based upon a variety of local conditions and demands for services. Local medical center directors must balance a variety of program needs with available resources in determining staffing levels in all services and functions within medical centers.

Question: 13B. With only one police officer on duty at a medical center, who is considered that officer's backup, to the extent a backup is needed?

13C. To the extent that a single police officer on duty needs a backup, how is the officer expected to contact that backup, especially if the officer is already engaged in a threatening or emergency situation?

Answer: Medical center security units develop procedures locally to provide the single on duty police officer with necessary assistance. Should the police officer need the assistance of another VA police officer in a non-emergency situation, this is normally obtained by a call-back procedure in which the security unit chief or other responsible police officer is requested to come to the medical center and provide the needed assistance. If the police officer is already engaged in a threatening or emergency situation this is normally accomplished by the officer calling the on duty medical center telephone operator or other designated individual using a two-way portable police radio and identifying the need for emergency assistance. This individual then relays the request to local police.

Question: 13D. For VA medical centers with two divisions, is it acceptable to have only one police officer on duty at each of the divisions when the population for either or both of the divisions is greater than 500.

Answer: Population alone should not be used to determine the number of police officers needed. The number of police officers on duty should be determined based upon the size and physical dispersion of the medical center, the environmental crime conditions, and the total patient and employee population plus transient activity. These criteria should be used for each division of a two-division medical center.

Question: 15. VA's response to question 21A states that there are 34 medical centers which have special rates in effect for police officers. Please identify those 34 centers.

Answer: As of August 18, 1989, special rates are in effect at the following 38 VA facilities (34 medical centers previously reported, the independent outpatient clinic at West Los Angeles, and 3* recently approved authorizations):

Livermore, CA
Los Angeles OPC, CA
Palo Alto, CA
San Francisco, CA
West Los Angeles, CA
Baltimore, MD
Minneapolis, MN
Lyons, NJ
Brooklyn, NY
Newington, CT
Washington, DC
Chicago (LS), IL
Hines, IL
Bedford, MA
Northport, NY
Cleveland, OH
Pittsburgh (HD), PA
Dallas, TX
White River Jct., VT*
Long Beach, CA
Martinez, CA
San Diego, CA
Sepulveda, CA
Brockton/W. Roxbury, MA*
Ft. Howard, MD
East Orange, NJ
Bronx, NY
New York, NY
West Haven, CT
Miami, FL
Chicago (WS), IL
N. Chicago, IL
Boston, MA
Cincinnati, OH
Philadelphia, PA
Pittsburgh (UD), PA
Houston, TX
Roseburg, OR*

Question: 16. VA's response to question 21C states that, since October 1, 1987, no request for special pay has been turned down.

16A. What is the significance of the October 1, 1987, date?

Answer: In your earlier questions 21d and 21e, you requested security service turnover rate information for FY 1988. We used October 1, 1987, the beginning of FY 1988, in our reply to question 21c to maintain consistency in all responses under question 21.

Question: 16B. According to information obtained from VACO Security Service, a request for special pay was denied to the Kansas City VAMC security service on September 28, 1987.

(i) What other special pay requests were denied before the October 1, 1987, date?

(ii) For each request identified, please describe the reasons for the denial and whether a subsequent request for special pay has since been requested and approved.

Answer: Our initial response covered requests for establishing special rates for police officers since October 1, 1987. The information provided below is intended to clarify our special salary rate activities since February 6, 1986, the date the Office of Personnel Management (OPM) transferred control of police officer special salary rate actions to us.

September 17, 1987 - VAMC Houston, TX; insufficient staffing problems; rates authorized 4/23/89

September 28, 1987 - VAMC Kansas City, MO; insufficient staffing problems

October 2, 1987 - VAMC Northport, NY; insufficient staffing problems; request was for expanding coverage to Service Chief; special rates were, and continue to be, in effect through GS-9

March 16, 1989 - VAMC Minneapolis, MN; insufficient staffing problems; request was for an increase in rates; rates in effect were continued.

Question: 17. According to information obtained from the Indianapolis VAMC, a request for special pay for its security service was forwarded to the Regional Medical Director in December 1988, and has been pending there ever since.

17A. Why has this proposal been pending since December 1988?

Answer: It is not completely accurate to say that the proposal was pending since December 1988. It is true that a special pay request was submitted to the Great Lakes Regional Director in December 1988, however, since VA policy at that time was that medical centers were required to fund such pay requests, the medical center asked that it not be processed. When the decision was subsequently made to centrally fund special pay requests, VAMC Indianapolis submitted a new request. This latter request has been submitted to VA Office of Personnel and Labor Relations for action.

Question: 17B. What other security units have special pay requests pending and what is the status of those requests?

Answer: The following requests are being evaluated in the Office of Personnel and Labor Relations.

New Requests:

VAMC Indianapolis, IN - received 7/13/89
VAMC Allen Park, MI - received 7/17/89
VAMC Ann Arbor, MI - received 7/17/89

Requests for increases in current rates:

VAMC Lyons, NJ - received 7/31/89
VAMC East Orange, NJ - received 7/17/89

A request from Montrose, NY, was forwarded to OPM for concurrence on 7/14/89.

Question: 18. VA's response to question 21E lists 29 VAMCs that have not requested special pay. The listing for 2 of the 29 VAMCs (White River Junction and Montrose) shows the notation "pending".

18A. Does this mean these 2 VAMCs have requested special pay?

Answer: Requests for special salary rates for police officers at VAMC White River Jct. and Montrose had been received and were awaiting approval.

Question: 18B. If the two requests are pending, what action is each of the requests awaiting?

Answer: Special salary rates for VAMC White River Jct. were effective 7/2/89. We are awaiting OPM's concurrence on those for Montrose.

Question: 19. VA's response to question 22C states that VACO does not know how many medical centers are considering reclassifying their positions to the GS-6 level. Apparently, VACO attempted to gather some information on GS-6 positions in early 1989 (see Attachment I). Please provide the complete results of that effort.

Answer: In early 1989 Security Service in Central Office did attempt to gather some information regarding medical centers that had, or were in the process of reclassifying their police officer positions to the GS-6 positions. This attempt was discontinued because of incomplete responses from medical centers. All of the information collected has previously been provided to a representative of the Committee.

Question: 20. In an undated memo obtained from VACO Security Service (see Attachment II), 26 VAMC security units were listed as apparently good candidates for grade-change classification.

20A. On what basis were the 26 VAMC security units so identified?

Answer: These were selected by the former Director, Security Service who compared the OPM Grade Evaluation Guide for Police and Security Guard Positions issued in April 1988 with his knowledge of the duties and responsibilities of police officers at medical centers of varying size, complexity, and location throughout the country. Based upon this comparison, it was believed these medical centers were good candidates for classifying journeyman police officers at the GS-6 level.

Question: 20B. What is the status of grade-change classification for each of the 26 VAMCs listed?

Answer: The following is the status of the classification review of Police Officer positions at the VAMCs:

Eighteen medical centers have established GS-6 Police Officer positions. The number established at each location varies depending on the security needs of the individual medical center:

Bronx, NY
Brooklyn, NY
New York, NY
Boston, MA
Tampa, FL
Chicago (LS), IL
Chicago (WS), IL
North Chicago, IL
Hines, IL
Kansas City, MO
St. Louis, MO
Long Beach, CA
Portland, OR
Dallas, TX
Houston, TX
West Los Angeles, CA
Cleveland, OH
Lyons, NJ

Two medical centers have not yet completed their reviews:

Philadelphia, PA
Tucson, AZ

Six medical centers determined that they could not support GS-6 positions:

East Orange, NJ
Miami, FL
Palo Alto, CA
San Francisco, CA
Phoenix, AZ

Question: 21. Apparently, some VAMC security units have attained service-level status while some are still classified as a section.

21A. What bases are used to determine whether a VAMC should have a security service rather than a security section?

Answer: A service level organizational element at a VA medical center is one with full activity, personnel and budgetary management responsibilities, while a section is part of a parent service or office level organization and is responsible for partial personnel and budgetary planning and management.

Question: 21B. Which VAMCs have a security section rather than a security service?

Answer: The list of medical centers who remain listed as a section are as follows:

Alexandria, LA
Altoona, PA
Amarillo, TX
Ann Arbor, MI
Asheville, NC
Baltimore, MD
Batavia, NY
Bath, NY
Battle Creek, MI
Beckley, WV
Big Spring, TX
Biloxi, MS
Birmingham, AL
Buffalo, NY
Butler, PA
Canandaigua, NY
Castle Point, NY
Charleston, SC
Coatesville, PA
Columbia, MO
Columbia, SC
Des Moines, IA
Erie, PA
Fargo, ND
Fayetteville, AR
Fort Harrison, MT
Fort Howard, MD
Fort Lyon, CO
Fort Meade, SD
Grand Island, NE
Hampton, VA
Hot Springs, SD
Huntington, WV
Iowa City, IA
Iron Mountain, MI
Kerrville, TX
Lebanon, PA
Lexington, KY
Lincoln, NE
Lyons, NJ
Madison, WI
Manchester, NH
Marlin, TX
Martinez, CA
Martinsburg, WV
Mountain Home, TN
Muskogee, OK
Newington, CT
Omaha, NE
Palo Alto, CA
Philadelphia, PA
Prescott, AZ
Roseburg, OR
Salem, VA
Salisbury, NC
Salt Lake City, UT
Sheridan, WY
Shreveport, LA
Spokane, WA
Syracuse, NY
Tuscaloosa, AL
Walla Walla, WA
West Haven, CT
White City, OR

Question: 21C. To which organizational element at a VA medical center would a security section typically report?

Answer: A security section is organizationally located within the Office of Director and normally supervised by the Associate Medical Center Director.

Question: 22. VA's response to question 25 states that, of the approximately 60 medical centers where security has achieved service-level status, the security chief is either the lowest or one of the lowest graded service chiefs. What plans does VACO have to analyze and possibly raise the GS-grade of its security chiefs?

Answer: Almost all security chief positions are classified in the GS-083 Police Officer Series, which recognizes as their primary role the supervision of subordinate police officers. We use the Supervisory Grade-Evaluation Guide (SGEG) to determine grades. At a few locations where management determined that the chief's primary role is the planning, implementation, and evaluation of a total security program, with the subordinate supervisors directing police officers, the GS-080 Security Administration Series was used to classify the positions. In such cases, the GS-080 classification standard will provide for higher grades than the SGEG. We have advised medical center officials that, when recommended by them, full consideration will be given to including additional positions in the GS-080 Security Administration Series.

Question: 23. VA's responses to questions 30, 31A, and 31B state that security chiefs' performance is not evaluated under a common, generic, or "prototype" set of performance requirements.

23A. Is it feasible for VACO to require that performance evaluations of security chiefs consider the level of crime at the respective VAMCs and whether that level of crime is acceptable?

Answer: It may be feasible but in the judgment of program officials it would not be reasonable or equitable.

Question: 23B. If so, is VACO willing to establish such a requirement? If not, why not?

Answer: The level of crime at any given VA medical center is influenced by a myriad of factors, over many of which the chief of the security unit has no control. Because of this we do not believe that the chief of a security unit should be held accountable for the level of crime at the facility.

Question: 23C. Is it feasible for VACO to require that performance evaluations of security chiefs consider the percentage of successfully resolved cases at individual VAMCs?

Answer: It may be feasible but in the judgment of program officials it is not consistent with the primary responsibility of VA security units.

Question: 23D. If so, is VACO willing to establish such a requirement? If not, why not?

Answer: The primary responsibility of VA security units is to provide protection to patients, visitors and employees on facility premises and to provide protection for government property. Law enforcement is considered to be a secondary responsibility. We believe that holding security unit chiefs responsible for the percentage of successfully resolved cases would cause these chiefs to concentrate their efforts and resources on solving crimes to the detriment of the primary function of protection. We further believe that because VA policy limits investigations by its police and because many crimes are referred to other Federal and state law enforcement organizations that VA security unit chiefs should not be held accountable for a percentage of successfully resolved cases.

Question: 24. VA's response to question 32 states that a medical center is required to do a position-management review of its security service at least every three years.

24A. Information obtained from the Kansas City VAMC disclosed that a position management review had not been conducted since 1982. Why hasn't a subsequent review been conducted? Whose responsibility was it to see that this review was conducted when due?

Answer: Agency policy requires a systematic review of each organizational element at least every three years. The medical centers are responsible for establishing a schedule for the reviews and delineating the specific responsibilities for their conduct. Local management is also responsible for ensuring that the position management reviews are completed.

Question: 24B. Information obtained from the Bonham VAMC disclosed that a position management review of its security service has never been conducted. Bonham's security unit was elevated to service-level status in 1986. Why hasn't a position management review been conducted? Whose responsibility was it to see that this review was conducted?

Answer: Medical Center management is responsible for ensuring that the agency-required position-management reviews are conducted.

Question: 24C. At which VAMC security services has a position-management review not been conducted within the last 3 years?

(i) For each of those VAMC security services identified, why hasn't a position management review been conducted?

(ii) For each, when will such a review be conducted?

Answer: We do not maintain records in VACO on locally conducted position management reviews. These records are maintained by each medical center.

Question: 25. VA's response to question 33 does not mention if the position management review analyzes whether required training has been provided.

25A. Is an analysis of whether required training has been provided also a function of the position management review? If not, why not?

Answer: Position management reviews are designed to ensure the most effective use of personnel. Within this context, it is local management's responsibility to determine the scope and content of the review.

Question: 25B. What VACO guidance is provided to the individual VAMC's on the recommended scope of the position management review? To the extent that it exists, please provide a copy of that guidance.

Answer: We issued guidance on the conduct of position management reviews (Attachment 5) to field facilities in 1982. It is being incorporated in MP-5, Part I, Chapter 511, which is currently being revised.

Question: 25C. The last position management review by the Kansas City VAMC of security service was completed, as previously stated, in 1982. That review said that supervisors hadn't completed the required supervisory training. Has that supervisory training been provided since and, if so, when?

Answer: Local medical center management officials stated that according to 1986 position management review records, three supervisors had completed the training and a fourth individual was scheduled for training. Currently, three supervisors have had 80 hours of training; a fourth supervisor, placed in the position in December 1988, has completed 40 hours and will receive an additional 40 hours during October 1989.

Question: 26. VA's response to question 34 states that position management reviews analyze the appropriate security service staff size (emphasis added). Please provide a copy of the VACO guidance which indicates that an analysis of security service staff size is a required feature of the position management review.

Answer: A copy of agency policy on position management is attached. (Attachment 6).

Question: 27. VA's response to question 35 states that there is no centrally directed policy on when a service should be functionally reviewed but that, where there are obvious problems or out-of-line situations, medical center management may initiate reviews at frequent intervals or may require the completion of problem-focused reviews or continuous monitoring.

27A. Twenty security programs, according to VA's response to question 10, have been found unsatisfactory in some aspects of their operation. Have the various medical center managements conducted a functional review of the individual 20 security programs? If so, when? If not, why not?

Answer: This information is not available centrally. VHS&RA in Central Office does not maintain files on functional reviews conducted at medical centers.

Question: 27B. Where a security program, such as at these 20 VAMCs, is operating unsatisfactorily, why isn't medical center management required by VACO to initiate reviews at frequent intervals or to maintain continuous monitoring?

Answer: The conduct of a functional review following the determination that a security unit is operating unsatisfactorily may or may not be appropriate. In some instances it may be the findings of a functional review that cause top management at a medical center to request a security program evaluation. What is required following any program evaluation (whether satisfactory or unsatisfactory) is that the medical center advise Central Office of the plan of action to correct noted deficiencies. We believe that each medical center director is best able to determine, within general guidelines provided, the nature and frequency of necessary reviews for all services and operations.

Question: 28. VA's response to questions 37B and C state that it is not specifically required that the annual management reviews either show biennial or triennial crime trends and trends of satisfactorily resolved cases or highlight categories of crime that have become unusually high. Wouldn't such information better advise medical center management regarding the adequacy of security operations and whether those operations need improvement?

Answer: The need for presenting such information in a formal manner varies among facilities depending on local conditions and management style. We believe that local managers, who are responsible for ensuring security, are best able to determine the nature of information needed during periodic reviews.

Question: 29. VA's response to question 37D states that it may be unnecessary for annual management briefings to establish specific measurable goals to reduce or limit crime to a particular level since *most* security unit chiefs meet daily with medical center top management and *some* locations review crime reports on a monthly basis (emphasis added).

29A. VA's response clearly suggests that not all security units are meeting daily or monthly with medical center management. Given that, shouldn't there be a requirement that annual management briefings establish specific measurable goals to ensure that such information is periodically discussed?

Answer: What the response to 37D suggests is that Security Service in Central Office does not know the specifics of how management at each medical center is kept informed of security issues. This depends on the management style of the director. It is normal procedure at medical centers for significant security issues to be discussed as they occur or as they are noted, and at morning meetings held to discuss all significant events that have occurred since the previous morning meeting.

Question: 29B. Wouldn't the existence of specific measurable goals provide medical center management a better basis to evaluate the success of its security operations?

Answer: We believe that this depends on the local situation. Since local management is responsible for ensuring security (within centrally established guidelines), we believe that local management should also have the authority for determining the nature of the goals they may wish to use to evaluate the success of security operations.

Question: 29C. Without specific measurable goals, on what basis is the success of security operations presently evaluated?

Answer: Information on how each medical center evaluates the success of its security program is not available centrally. Although the number is not known, it is known that measurable goals are used at some medical centers. Security Service in Central Office has provided each medical center with the Security Service Program Evaluation Checklist which may be used by local management to conduct an assessment of compliance to program policy. Also, Regional Security Officers are available to provide technical assistance to medical center management in helping to determine the success of a particular security operation.

Question: 30. What guidance has VACO Security Service provided individual VAMCs to assist those centers in developing performance standards for the security chief, detectives, supervisors, and police officers?

Answer: In the early 1980s VA Office of Personnel organized job task groups which accomplished job analyses for all occupations in VHS&RA. Representatives of VACO Security Service participated in these task groups and assisted in developing job analyses for police officers and supervisory police officers. The resulting job analyses were distributed to all medical centers for use in developing local performance standards.

Question: 31. Please provide a copy of VA's specific medical and psychological standards for VA police applicants and incumbents. If these standards do not set parameters regarding how overweight or underweight a person might be and still be considered fit for duty, why do they not?

Answer: Medical standards for VA police officers are attached (Attachment 7). Minimum height and weight requirements for police officers were rescinded by OPM (Civil Service Commission) in February 1974 (former standard and rescission Attachment 8). That agency retains authority to establish medical standards for government-wide occupations.

FPM Chapter 339, Medical Qualification Determinations, restricts agency establishment of height or weight standards. VA police officers and applicants are examined by agency physicians who are well-qualified to judge whether a person's weight poses danger. They may use height and weight charts to help decide whether further evaluations are necessary. Given the wide variances in individual anatomy, personal observation and examination by a professional are preferable to the use of standardized weight parameters to determine fitness.

Question: 32. VA's response to question 46 states that, in 1985, the Attorney General reviewed the VA police officer training course and determined that the course content was appropriate. The Attorney General also urged that the training be extended to a minimum of 4 weeks. Why wasn't the training so extended?

Answer: Training was not extended to four weeks due to budgetary limitations; however, since that time it has been extended from 40 to 66 hours.

Question: 33. Information obtained from VACO Security Service showed that, for fiscal year 1987, there were 18 lost-time-from-work claims submitted by VA police officers (see Attachment III).

33A. Are the data in Attachment III correct?

Answer: Attachment III shows that in FY 1987, there were at least 18 police officer lost-time-from-work claims coded as "violence" Unfortunately, there were also 94 lost-time-from-work claims coded as "violence" but not coded by occupation. These are listed under occupation "9999". The police officer data may not be correct because some of these 94 claims may have been made by police officers. Since coding in 1987 was generally incomplete, the 1987 statistics are very unreliable and are not used.

Question: 33B. If the data in Attachment III are correct, please reconcile their existence with VA's response to question 47 which states that VA did not break down OWCP data by occupation until FY 1988.

Answer: The coding of workers' compensation claims significantly improved in FY 1988. It is the first year for which we have some confidence in the accuracy of the data on source or type of injury and occupation. However, even in FY 1988, coding for some cases was not complete.

Question: 33C. If the data in Attachment III are correct, there has been a 480 percent increase in lost-time-from-work claims submitted by VA police officers from fiscal year 1987 to 1988.

(i) What are the reasons for such a dramatic increase?

(ii) What changes are planned to curb this increase?

Answer: The figure we reported for FY 1988 represents all the job-related injuries reported by police officers regardless of the source of injury. The figure includes any kind of injury, such as accidental falls and cuts, as well as those resulting from violence. Attachment III shows only those FY 1987 cases that were the result of injury due to violence (and is unreliable); therefore, the figures cannot be compared meaningfully to determine whether or not the number of injuries for police officers has increased or decreased.

Question: 34. VA's response to question 49 states that incidence of assaults are, in part, one of the bases on which approval for police officers to carry nightsticks at medical centers would be given.

34A. Which 20 VAMCs had the highest recorded number of assaults with dangerous weapons for fiscal year 1988?

34B. Of the 20, which have been approved for police officers to carry nightsticks?

Answer: The following 21 medical centers reported three or more assaults with dangerous weapons during fiscal year 1988. Those approved for police officers to carry nightsticks are so indicated.

Bronx, NY	Approved
West Los Angeles, CA	Approved
Brockton, MA	Approved
East Orange, NJ	Approved
Waco, TX	
Northampton, MA	
Providence, RI	
New York, NY	
Perry Point, MD	
N. Chicago, IL	
Augusta, GA	
Tuscaloosa, AL	
Sheridan, WY	
Ft. Howard, MD	
Bay Pines, FL	
Lake City, FL	
Muskogee, OK	
Dallas, TX	
Roseburg, OR	
White City, OR	
Portland, OR	

Question: 35. VA's response to question 50 lists 9 VAMCs as being authorized to carry nightsticks.

35A. According to information obtained from VACO Security Service there is a possible inconsistency in the approved area of use of nightsticks at the 9 VAMCs. Specifically, the Boston, Milwaukee, West Los Angeles, and Kansas City VAMCs have apparently received approval for only exterior (outside of medical center facilities) use of the nightstick. Conversely, the Bronx, East Orange, Martinsburg, Oklahoma City, and Wilmington VAMCs have apparently received approval for unrestricted use of nightsticks. Please clarify the approved usage areas of nightsticks for the 9 VAMCs. To the extent that some VAMCs have received approval for only exterior wear and some VAMCs have received approval for unrestricted wear, please explain the justification for each.

Answer: We do not see any inconsistency. A review of available requests and approval documents indicate that the approvals for both exterior and unrestricted use were consistent with the requests made. Copies of all of these documents have already been made available to a representative of the Committee.

Question: 36. According to VA's responses to questions 23 and 51, there are 78 VAMCs in high crime areas and 7 of the 78 have been approved for carrying nightsticks. Thus, it appears that 71 VAMCs in high crime areas have not received approval for the carrying of nightsticks. The VA response to question 52A lists only 59 of these 71 VAMCs.

36A. What are the other 12 VAMCs in high crime areas that have not received nightstick approval?

Answer: In reviewing this we discovered that the number of medical centers in high crime areas is somewhat fewer than first reported. In order to simplify the answer we are listing all medical centers in high crime areas, with a notation as to which have been approved for use of the police baton as follows:

Region 1	
Boston, MA	Approved
Brockton, MA	
Providence, RI	
Bronx, NY	Approved
Brooklyn, NY	
New York, NY	
Region 2	
East Orange, NJ	Approved
Lyons, NJ	
Wilmington, DE	Approved
Baltimore, MD	
Ft. Howard, MD	
Washington, DC	
Richmond, VA	
Asheville, NC	
Durham, NC	
Fayetteville, NC	
Region 3	
Columbia, SC	
Decatur, GA	
Biloxi, MS	
Birmingham, AL	
Tuskegee, AL	
Memphis, TN	
Nashville, TN	
Bay Pines, FL	
Gainesville, FL	
Lake City, FL	
Miami, FL	
Tampa, FL	
Region 4	
Chillicothe, OH	
Cleveland, OH	
Dayton,OH	
Ann Arbor, MI	
Battle Creek, MI	
Saginaw, MI	
Chicago (LS), IL	
Chicago (WS), IL	
Hines, IL	
N. Chicago, IL	
Region 5	
Minneapolis, MN	
Kansas City, MO	
St. Louis, MO	
Topeka, KS	
Wichita, KS	
Des Moines, IA	
Denver, CO	
Salt Lake City, UT	

Region 6	
San Diego, CA	
Sepulveda, CA	
West Los Angeles, CA	Approved
Fresno, CA	
Reno, NV	
American Lake, WA	
Portland, OR	
Roseburg, OR	
Seattle, WA	
Spokane, WA	
Walla Walla, WA	
White City, OR	
Region 7	
Alexandria, LA	
Little Rock, AR	
Muskogee, OK	
New Orleans, LA	
Oklahoma City, OK	Approved
Shreveport, LA	
Bonham, TX	
Dallas, TX	
Houston, TX	
San Antonio, TX	
Waco, TX	
Albuquerque, NM	
Phoenix, AZ	
Tucson, AZ	

Question: 36B. The crime index for the Salt Lake City VAMC, the only medical center known to have been disapproved for nightsticks, is reportedly 13.1 (higher than any VAMC that has been approved to carry the nightstick). Why was the Salt Lake City VAMC's request disapproved?

Answer: The request from the medical center in May 1988 failed to document incidents of assaultive or threatening behavior against police officers. Also, a review of the Uniform Crime Reports for that medical center reflected only one reported incident of an assault involving a dangerous weapon and a total of only thirteen simple assaults in fiscal year 1987. Additionally, the crime reports for fiscal year 1988 reflected only that simple assaults had been committed through May 1988.

Question: 37. VA's response to question 52B lists 16 VAMCs which have magnetometers but which apparently are not in high crime areas.

37A. On what bases was it determined that each of these 16 VAMCs should have a magnetometer?

Answer: The basis for each decision was made locally over a period of time and reasons for doing so are not centrally available. Security Service in Central Office does not maintain files on the purchase of magnetometers.

Question: 37B. Eight of the 16 VAMCs listed -- Bedford; Togus; Wilkes-Barre; Pittsburgh (UD); Livermore; Canandaigua; Northport; and Mountain Home; -- do not similarly appear in the VA response to question 60 listing which VAMCs have magnetometers. Why is that?

Answer: This was an apparent oversight due to the attempt to collect information and answer a significant number of detailed questions in a very limited period of time.

Question: 38. VA's response to question 53 states that the criterion for the purchase of protective vests is the existence of a high possibility that officers may be weapon injured. VA's response to question 49 states that the criterion for the carrying of a nightstick is documenting incidents of assaults or threatening behavior against police officers.

38A. What is the difference, if any, in the criterion for the purchase of the protective vest and that for the carrying of the nightstick?

Answer: The major difference is not in the criterion per se but in the fact that the decision to purchase protective vests is a local one, which recognizes hostile experiences which have occurred and the likelihood that they may recur at any time. Further, as participants in the decision, a majority of members of the medical center's security unit must have expressed their concern for personal safety on the job and have requested protective vests. Following a management decision to procure protective vests in recognition of an occupational safety hazard, all VA police officers at the medical center are expected to wear the protective vests as a uniform item. This expectation is based upon guidance provided from central office. As was explained in a previous series of questions, VA has not established a nationwide policy regarding the wearing of protective vests.

The decision to purchase and supply the police baton to VA police officers is not a local one. The reason for this is because the baton is not only for defense but has the potential to be used as an offensive weapon. It is the judgment of VHS&RA officials that the approval of supplying police officers with such a weapon (other than the official VHS&RA weapon of mace) should be centrally controlled.

Question: 38B. Which VAMCs use protective vests but not nightsticks and which VAMCs use nightsticks but not protective vests?

Answer: The following is a list of those medical centers that report having purchased at least one protective vest for use by their police officers and have not been authorized the use of the police baton.

Bedford, MA
Togus, ME
Montrose, NY
Asheville, NC
Butler, PA
Lyons, NJ
Philadelphia, PA
Pittsburgh (UD), PA
Salem, VA
Wilkes-Barre, PA
Gainesville, FL
Cleveland, OH
Ann Arbor, MI
Marion, IN
Madison, WI
Cheyenne, WY
Des Moines, IA
Ft. Meade, SD
Knoxville, IA
Minneapolis, MN
Salt Lake City, UT
Loma Linda, CA
San Diego, CA
Livermore, CA
Reno, NV
Roseburg, OR
White City, OR
Dallas, TX
Waco, TX
Prescott, AZ

Northport, NY
Canandaigua, NY
West Haven, CT
Baltimore, MD
Coatesville, PA
Mountain Home, TN
Pittsburgh (HD), PA
Richmond, VA
Salisbury, NC
Decatur, GA
Chillicothe, OH
Dayton, OH
Saginaw, MI
Iron Mountain, MI
Hines, IL
Denver, CO
Ft. Lyon, CO
Iowa City, IA
Leavenworth, KS
St. Louis, MO
Topeka, KS
Long Beach, CA
Sepulveda, CA
Martinez, CA
Portland, OR
Seattle, WA
Fayetteville, AR
Houston, TX
Phoenix, AZ
Tucson, AZ

The following is a list of medical centers that have been authorized the use of the police baton but have not reported that they have purchased at least one protective vest.

East Orange, NJ
Kansas City, MO
Milwaukee, WI

Question: 39. On the basis of the VA response to question 55A, it appears that 33 VAMCs in high crime areas have not purchased protective vests for use by their police officers.

39A. What specific plan, if any, does VA have to require all VAMCs in high crime areas to purchase protective vests for their police officers?

Answer: At the present time VA has no plans to require all VAMCs in high crime areas to purchase protective vests.

Question: 39B. If VA has no specific plans, why not?

Answer: In the judgment of program officials the current criteria, which do not necessarily include that a medical center is in a high crime area, are satisfactory.

Question: 40. On the basis of VA's responses to questions 54 and 55A, 21 VAMCs not in high crime areas have purchased protective vests for their police officers.

40A. Please identify those 21 VAMCs.

Answer: The following medical centers not in high crime areas report having purchased at least one protective vest for police officers.

Albany, NY
Philadelphia, PA
Butler, PA
Pittsburgh (UD), PA
Salem, VA
Salisbury, NC
Iron Mountain, MI
Leavenworth, KS
Iowa City, IA
Ft. Lyon, CO
Livermore, CA
Fayetteville, AR
Coatesville, PA
Wilkes-Barre, PA
Pittsburgh (HD), PA
Martinsburg, WV
Mountain Home, TN
Marion, IN
Madison, WI
Ft. Meade, SD
Knoxville, IA
Long Beach, CA
Martinez, CA

Question: 40B. On what bases were the protective vests requested and approved?

Answer: As we have previously stated, the decision to purchase protective vests is a local one. We therefore do not have the information requested. We can only say that the decisions should have been based upon already stated criteria.

Question: 41. VA's response to question 55B lists 8 VAMCs which use hand-held or walk-through magnetometers and have not purchased protective vests for their police officers. Information separately obtained from VACO Security Service identified 5 other VAMCs as also having magnetometers but not having protective vests -- New York; Durham; Cincinnati; San Francisco; and American Lake. Why weren't they also listed?

Answer: This was an apparent oversight.

Question: 42. VA's response to question 56 states that at 33 (of the 66) VAMCs that have purchased protective vests for their officers, the officers are not wearing the vests. What are VA's specific plans for ensuring that police officers wear protective vests where they have been purchased for them?

Answer: At the present time the issue of protective vests for police officers is under review.

Question: 43. VA's response to question 59 states that the criterion used for approval of stationary magnetometers is a demonstrated need for the device, such as an increase in the number of confiscated weapons. Is the availability of sufficient staff to operate the magnetometer properly also a criterion for approval?

Answer: Yes, if the approving official believes staffing to be an issue.

Question: 44. The decision to purchase and use portable magnetometers is left to each medical center.

44A. Apparently, no criteria for the purchase and use of portable magnetometers exist. Why is that?

Answer: In the judgment of program officials, there has been no reason to establish criteria for the purchase and use of portable magnetometers.

Question: 44B. Are the reasons for purchasing and using a portable magnetometer the same for purchasing and using a stationary magnetometer? If not, how and why do they differ?

Answer: As was stated in answer 59 to a previous series of questions any approval or disapproval for stationary magnetometers is made as a part of the Central Office approval process through the Office of Acquisition and Materiel Management. The purchase and reasons for the purchase of portable magnetometers is a local decision over which Central Office maintains no control. We therefore are unable to give accurate reasons for such a local decision.

Question: 44C. Without criteria for purchasing and using a portable magnetometer, how does an individual VAMC know it needs one or more?

Answer: In order to become a chief of a VA Security Unit, an individual must possess certain knowledge, skills and abilities regarding the field of security and law enforcement. With this as given, we believe that these individuals should be able to make recommendations to local management regarding the need for purchasing portable magnetometers. If local management officials are unsure of their needs they can easily contact the appropriate Regional Security Officer for advice.

Question: 45. VA's response to question 60 lists 8 VAMCs as having stationary metal detectors. According to information obtained separately from VACO Security Service, 3 of these VAMCs have protective vests and nightsticks, 3 do not have protective vests or nightsticks, 1 has protective vests but no nightsticks, and 1 has nightsticks but no protective vests. Please explain the apparent inconsistency in the protection afforded police officers at these 8 VAMCs.

Answer: The decisions to purchase protective vests and to request approval for purchasing the police baton are local ones. Because of this and because of the fact that such decisions may have been made over an eight to ten year period, we do not agree that there is necessarily any inconsistency.

Question: 46. VA's response to question 60 also lists 30 VAMC's as having portable metal detectors. Seven of the VAMCs listed -- Butler; Richmond; Cincinnati; Iron Mountain; Omaha; Ft. Lyon; and San Francisco --apparently have not been approved for the carrying of nightsticks. To the extent that is true, why weren't these 7 VAMCs also listed in the VA response to question 52B?

Answer: This was an apparent oversight.

Question: 47. VA's response to question 61 states that VACO Security Service is aware of only one VAMC (Oklahoma City) where a stationary metal detector was disconnected and, at that VAMC, the detector was disconnected because its location at the ambulatory care entrance prevented emergency patients from being brought in without delay.

47A. (i) Has the stationary metal detector been installed at another location at the Oklahoma City VAMC?

(ii) If so, where?

(iii) If not, why not?

Answer: The stationary metal detector has not been installed at another location in the medical center. It is currently in storage and will be re-installed after the emergency entrance is relocated.

Question: 47B. Information separately obtained from VACO Security Service also showed that the New Orleans VAMC disconnected its stationary metal detector in 1984 because police officers were observed failing to respond to the metal detectors when alarmed.

(i) Why weren't the police officers responding to the alarm?

(ii) Has the detector been reconnected? If not, why not? If yes, are the officers now responding to the alarm?

Answer: Because of the passage of time and changes in personnel we are unable to say why police officers were failing to respond to the alarm in 1984, and why it was subsequently disconnected. We can say that the sensitivity of such devices is often difficult to set accurately, causing the alarm to sound quite frequently. The end result is a tendency to ignore the alarm particularly when an individual known to the police officer causes the alarm to sound. The medical center reports that this detector is not currently in use.

Question: 48. VA's response to question 62 mentions only that at the San Juan VAMC officers were observed not stopping individuals who activated the alarm on the detector.

48A. Why weren't officers stopping individuals?

48B. To the extent that officers at the San Juan VAMC have neither protective vests nor nightsticks, does this lack play a role in officers not stopping individuals?

(i) Were officers subsequently asked why they were not stopping individuals?

(ii) If yes, what responses were given?

(iii) If not, why not?

Answer: The police officers themselves were not questioned specifically because they were not aware at the time that they were being observed. It was noted that the sensitivity level of the magnetometer was such that almost every individual who passed through the gate caused the alarm to sound. The security unit chief was subsequently questioned about the officers not stopping persons but he was unable to provide a logical reason for the failure to stop persons. It is the opinion of the Regional Security Officer who observed this situation that a combination of an incorrect sensitivity level setting plus an extremely large traffic flow overwhelmed the ability of police officers stationed at the metal detector to question everyone who triggered the alarm. There was no indication that a lack of protective vests and the police baton had any role in the matter.

Question: 49. VA's response to question 63 lists the 9 (of the top 20) VAMCs with the highest recorded number of assaults with dangerous weapons for fiscal year 1988 that do not report having stationary or portable metal detectors.

49A. Information separately obtained from VACO Security Service also identified the Waco, Portland, White City, and Dallas VAMCs as being within the top 20 medical centers with the highest recorded number of assaults with a dangerous weapon for fiscal year 1988 and as not reporting having stationary or portable metal detectors. Why weren't these centers also included in the response to question 63?

Answer: This was an apparent oversight.

Question: 49B. VA's response to question 63 also states that data on the number of weapons introduced into VAMCs are not collected centrally. The VHS&RA uniform monthly crime report for FY 1988 shows "weapons possession" as a crime category. Which of the 20 VAMCs experiencing the highest recorded number of "weapons possession" for FY 1988 have not installed stationary or portable metal detectors?

Answer: Among the twenty medical centers reporting the highest recorded number of weapons possession for FY 1988, the following also report not possessing either stationary or portable weapons detectors:

Boston, MA
Coatesville, PA
Waco, TX
Chicago (LS), IL
Canandaigua, NY
Sheridan, WY
St. Cloud, MN
Gainesville, FL

Question: 50. VA's response to question 65 suggests that MACE may have been ineffective in about 7% (18 out of 270) to 20% (55 out of 270) of the incidents in reaction to serious assaultive situations. What specific circumstances may have caused MACE ineffectiveness?

Answer: Teletypes sent to Central Office Security Service by medical centers do not include information that will allow us to answer this question. These teletypes give factual accounts of what occurred and do not attempt to give reasons for reported ineffectiveness.

Question: 51. VA's response to question 67A provided certain information about the fatal shooting of 2 Brecksville VAMC police officers.

51A. Brecksville VAMC police officers, after the shooting, stated that MACE is ineffective against "highly disturbed" individuals. VACO Security Service, in response, apparently requested information from the Department of Justice relative to this claim.

(i) What information has been received from the Department of Justice regarding the effectiveness of MACE against "highly disturbed" individuals?

(ii) What is the VA's established policy/procedures for how best to deal with "highly disturbed" individuals in circumstances in which MACE may not be effective against such individuals? Please provide a copy of those policy/procedures.

Answer: There is no indication that VACO Security Service requested information from the Department of Justice regarding the reported ineffectiveness of MACE against highly disturbed individuals. However, in response to questions from the Committee, Security Service has recently contacted the Department of Justice. This contact failed to identify any unit of that Department able to provide us with the information requested.

The handling of highly disturbed individuals in circumstances in which MACE may not be effective is not included per se in policies and procedures. However, at VA Police School newly employed VA police officers are trained in techniques for controlling such individuals in a manner in which injury to both the officer and the individual is kept to a minimum. Techniques include those not involving MACE.

Question: 51B. VA's official investigative report on the Brecksville VAMC shooting stated that several alternatives should be explored for possible utilization in specific high crime areas. Those alternatives were: (1) new, more effective MACE weapons; (2) use of stun guns; and (3) a "two-tiered" security force (exterior guards who are armed with firearms/interior guards who are armed only with MACE).

(i) What specific VA consideration has been given to these alternatives?

(ii) Please provide the results and conclusions of any consideration given.

Answer: This report was evaluated by program officials, who determined that the recommended alternatives of new, more effective MACE weapons and the use of stun guns were not viable. No record was made regarding this determination. The issue of providing firearms to VA police officers was evaluated by a policy review group. A copy of the report issued by that group is Attachment 9.

Question: 51C. VA's official investigative report on the Brecksville VAMC shooting recommended that an evaluation of police officer training should be done to see if it fully prepares the officers for the job they are asked to do.

(i) Was this evaluation done? If not, why not?

(ii) Please provide the results and conclusions of any consideration given.

Answer: Soon after the investigative report was issued, program officials carefully evaluated the facts to determine if there were any indication that a lack of training contributed to the deaths of the police officers. This evaluation revealed no such indication.

Question: 52. VA's response to question 67A also provided certain information about the fatal shooting of a Bronx VAMC police officers.

52A. The officer who was killed was operating a stationary metal detector by himself.

(i) Why was this officer operating the stationary metal detector alone?

(ii) How many officers at a time are presently being used at the Bronx VAMC to operate the stationary metal detector?

(iii) What is VA's policy on the required number of officers to operate a stationary metal detector properly?

Answer: The medical center reports that due in part to staffing shortages the stationary metal detector is operated by two police officers only during periods of peak ingress and by one police officer at other times. It was during a period of non-peak ingress that the police officer was killed. A VA Circular issued in October 1982 calls for two police officers to operate a stationary metal detector.

Question: 52B. The officer who was killed was wearing his own protective vest.

(i) Why hadn't the Bronx VAMC purchased protective vests for this officer and others prior to the shooting?

Answer: The medical center reports that prior to the officer's death, the purchase of protective vests was discussed with the police officers, but they were not purchased because the officers were not interested in wearing them at that time. There is no VA policy which requires them to do so.

Question: 52B. (ii) What type of protective vest was worn by the police officer?

Answer: The protective vest was one purchased by the police officer himself and its type is unknown to Security Service officials.

Question: 52B. (iii) Would a protective vest of a different design or quality possibly have saved this officer's life?

Answer: There is no indication from the facts that another type of protective vest would have prevented the officer's death. From the description of the incident it is clear that the fatal bullet was fired into an area (under the arm) that is not protected when one is in the position the officer was in at the time. Since three of the bullets were stopped by the vest, it is clear that the quality of the vest was also not a factor.

Question: 52B. (iv) What type of protective vest does VA recommend for police officers?

Answer: Bullet resistive vests prescribed for wear by VA police officers are to meet the National Bureau of Standards Class II Ballistic Level.

Question: 52B. (v) When subsequently were protective vests purchased for Bronx VAMC police officers?

Answer: Protective vests were obtained at VAMC Bronx in October 1988.

Question: 52B. (vi) Are all Bronx VAMC police officers presently wearing their protective vests? If not, why not?

Answer: The medical center reports that all police officers except one wear the protective vests. The one police officer refuses to wear the vest.

Question: 52B. (vii) What is VA's policy on requiring police officers operating a stationary metal detector to wear protective vests?

Answer: VA has no policy which addresses the wearing of protective vests by police officers operating stationary metal detectors.

Question: 53. VA's response to question 67C states that, after the deaths at the Brecksville VAMC, a letter was issued by VACO to all VHS&RA facilities describing the events and reaffirming existing policies.

53A. Was a similar letter sent out after the death at the Bronx VAMC? If not, why not?

Answer: Such a letter was not sent out after the death of the police officer at VAMC Bronx because in the judgment of program officials none was warranted.

Question: 53B. (i) To what extent has VA formally reevaluated its firearm policy after the death at the Bronx VAMC?

(ii) If VA has, please provide the results of that reevaluation.

Answer: VA has not formally reevaluated its firearm policy since the death of the police officer at VAMC Bronx.

Question: 53C. (i) To what extent has VA formally advised VHS&RA facilities, after the death at the Bronx VAMC, against using one police officer to operate a stationary metal detector.

(ii) If VA has, please provide a copy of that advisory.

(iii) If VA has not, why not?

Answer: No particular action was taken to advise facilities against using one police officer to operate a sationary metal detector. The report of investigation into the incident did not establish or even hint at a causative relationship between the death of the officer and the failure to adhere to a previously published circular which calls for the stationing of two police officers at the metal detector.

Question: 53D. (i) To what extent has VA formally advised VHS&RA facilities, after the deaths at the Brecksville VAMC, against denying security unit requests for protective vests as had occurred at Brecksville?

(ii) If VA has, please provide a copy of that advisory.

(iii) If VA has not, why not?

Answer: The implication in this question is that medical center management unilaterally denied a request from the Security Service for protective vests. Information from the medical center contradicts this implication. As we have previously advised, the medical center reports that the 1984 request from Security Service to purchase protective vests was declined due to a lack of concensus among police officers that the vests were desired and would be worn once individually fitted and tested.

Question: 53E. According to information obtained from the San Francisco VAMC, a formal request for protective vests by the security unit there was denied this year. If this is true, why was the request denied?

Answer: The medical center reports that protective vests were requested by the acting chief of the Security Service in April 1989, but medical center management postponed ordering the vests until the new chief of the service could be appointed and allowed to make a recommendation regarding their need. The new chief reported for duty on August 29, 1989, and will make a recommendation to medical center management regarding the need for protective vests.

Question: 53F. (i) Have security unit requests for protective vests been denied at any other VAMCs?

(ii) If so, why was the request denied in each case?

Answer: According to information obtained centrally from field stations in June 1989, the following medical centers have denied requests for protective vests:

Northampton, MA denied a request due to a lack of funds.
Ann Arbor, MI denied a request due to a lack of funds.
Hampton, VA denied a request due to a lack of funds.
Washington, DC denied a request because an assessment of local conditions did not reveal a high probability that employees may be injured by a weapon.

FOLLOW-UP QUESTIONS SUBMITTED BY SENATOR ALAN CRANSTON TO VA SECURITY CHIEFS TAYLOR, WATTS, AND HAWKINS

1. Are there any single-officer duty shifts at your center?

   A. Are you aware of any single-officer duty shifts at other VAMCs?

   B. How appropriate are single-officer duty shifts?

2. What is your present GS grade and is your grade comparable to that of other VA service chiefs at your center?

3. Is there consistency in the grade of VA security chiefs across the country?

4. Are the salaries of your police officers commensurate with the salaries received by comparable police officers working in your area?

5. Has the security service at your VAMC requested and been approved for special pay?

6. Has the security service at your VAMC requested and been approved for grade change classification for its police officers from GS-5 to GS-6?

7. A. Does the security service at your VAMC receive sufficient guidance and direction from VACO?

   B. Are you kept sufficiently advised by VACO about significant police happenings at other VAMCs?

   C. Are you kept sufficiently advised by VACO about changing trends in police practices?

8. Have you been contacted by VACO regarding additional training needs for your police officers?

9. When was the last time you received security chief training?

10. In what areas would you personally like to receive more training relative to discharging your duties as a chief?

11. What type of periodic physical fitness training and testing are police officers currently required to undergo?

12. Should periodic physical fitness training and testing be mandatory?

13. A. To your knowledge, is there any consistent pattern regarding which VAMCs across the country use and which do not use protective vests and/or nightsticks?

B. For VAMCs in high-crime areas, does the MACE weapon, in your opinion, provide sufficient stopping power against individuals committing criminal acts at these centers?

C. How effective is the MACE weapon as part of an intervention strategy with a disorderly patient?

D. Are police officers armed at nearby private hospitals?

E. Over the last 5 years, how many serious injuries have police officers suffered at VAMCs that you have served at? If possible, please identify those injuries and the surrounding circumstances, including the protection and armament available to the officers involved.

F. In your opinion, could those injuries have been prevented if the officers were better protected or armed? If so, what protection or armament would have been necessary?

G. When authorized, should the nightstick be worn both inside and outside of VAMC center facilities or only during outside duty?

H. Since the Brecksville and Bronx VAMC shootings, what changes have been made to improve protection of VA police officers?

Medical Center

Wadsworth and
Brentwood Divisions
Wilshire and
Sawtelle Boulevards
Los Angeles CA 90073

**Veterans
Administration**

August 21, 1989

In Reply Refer To 691/13

Senator alan Cranston
United States Senate
Committee on Veterans Affairs
Washington, D.C. 20510-6375

Dear Senator Cranston:

I am more than pleased to participate in any way that I can. The following are my responses to your questions, #'s 1 thru 13.

Sincerely,

Brian J. Hawkins

BRIAN J. HAWKINS
Chief, Security Service (132)

"America is #1—Thanks to our Veterans"

1. No

(a) Yes

(b) In some situations they may be appropriate.

2. GS-12 is my present grade. It is not comparable in my opinion. The Security Chief is usually the lowest graded Service Chief at every Medical Center.

3. No

4. No

5. Yes

6. Yes

7. (a) Yes

(b) No

(c) No

8. Yes

9. 1985

10. I would like to see a prototype established for Security Managers in the Department of Veterans Affairs.

11. None

12. No

13. (a) No

(b) The mace weapon should do an adequate job as long as the person the mace is being used on is not under the influence of a chemical rendering the weapon harmless or psychologically controlled in a manner which would lessen the effect of mace.

(c) I believe it is usually effective, but not in every situation.

(d) Yes

(e) At VAMC West Los Angeles exact number is unknown, but a good estimate would be about twenty (20). The most serious are:

(1) Officer Siebuhr - deceased. Death is still being evaluated by Los Angeles District Attorney since officer involved in subduing a subject, and about four (4) hours later suffered a heart attack. Death could be a result of this heart attack.

(2) Officer Phelps - Two (2) instances where physical altercations resulting in the officer suffering two (2) separate broken arms.

(3) Officer Ligon - Knee injury as a result of being kicked during an arrest process.

(4) Officer Hampton - shot in the leg while attempting to subdue an individual with a gun. No armament at the time; no baton, only mace.

The majority of injuries were the result of physical attacks that do not involve weapons.

(f) Unknown

(g) Yes

(h) Vests were issued and the incident was discussed. After the Bronx, a metal detector training video tape was developed and used in training for all personnel.

Brian J. Hawkins
BRIAN J. HAWKINS
Chief, Security Service
VAMC West Los Angeles

Medical Center

4500 South Lancaster Road
Dallas TX 75216

Veterans
Administration

In Reply Refer To: 549/132

August 29, 1989

Senator Alan Cranston, Chairman
United States Senate
Committee on Veterans' Affairs
Washington, DC 20510-6375

Dear Senator Cranston:

Listed below are the answers to the questions you sent me on your memo of August 9, 1989.

1. There are no single officer duty shifts at the Dallas VA Medical Center.

   A. I am aware of single officer duty shifts at many VA Medical Centers.

   B. Single officer duty shifts are not appropriate in any VA Medical Center.

2. I am presently a GS-10. In November I will be promoted to a GS-11. I am the lowest ranked Service Chief at the Dallas VA Medical Center.

3. Yes. The VA Police Chiefs are consistantly the lowest ranked and lowest payed Service Chiefs.

4. No. The Dallas VA Police Department starts about $1,000 - $2,000 lower than comparable police officers working in our area.

5. Yes. The Dallas VA Police do receive special pay.

6. Yes. Effective January 28, 1989 the Dallas VA Police were approved to grade change classification for its police officers from GS-5 to GS-6.

7. A. No

   B. No. We only hear what is happening at other VAMC's through the grapevine.

   C. No. We hardly ever hear from VACO on any police related issue.

"America is #1—Thanks to our Veterans"

8. No. All training needs are planned for locally.

9. I have been a Police Chief for almost three (3) years and have received no Police Chief Training. One day I was a shift supervisor the next day I was the Chief. It was quite an overwhelming experience.

10. I would like to see a Chiefs' Training Program that would include a budget process, procurement, recruitment, etc.

11. None. The only requirement for a VA Police Officer is to pass a physical that in my experience, nobody has ever failed.

12. Yes. I believe that all VA Police Officers be given yearly PT tests. Failure will result in loss of arrest, powers and termination if unable to retest successfully.

13. A. No. There is not any consistent policies on vests or nightsticks.

B. No. The Mace weapon is useless. It has never been used at the Dallas VA Medical Center.

C. It is totally useless. It will only enrage the patient and disable the VA Police Officer.

D. Yes. Only one (1) hospital in Dallas County has Police Officers and they are armed.

E. I am fortunate to say that there have been no serious injuries at the Dallas VA Medical Center over the past five (5) years. There have been lumps, bumps, and bruises but no serious injuries. My Officers have been shot at, stabbed at, chased by automobiles but to date we have been lucky.

F. N/A

G. It should be worn both inside and outside of the Medical Center since a violent encounter may happen at any place and time.

H. There have been no changes made to improve the protection of VA Police Officers. In my opinion more VA Police Officers will have to die before any real changes are made.

Please contact me if any additional information is desired.

John F. Taylor

JOHN F. TAYLOR
Chief, VA Police

Veterans Administration

Memorandum

Date: August 21, 1989

From: Frank M. Watts
Chief, Security Service

Subj: Follow-up Questions from Senator Alan Cranston

To: Alan Cranston
Chairman, Committee on Veterans Affairs

1. There are no single-officer duty shifts at my center.

A. I know that a lot of the smaller medical centers have single duty shifts. I personally worked alone for a period of over a month before I left VAMC, San Francisco in October of 1988. I worked the midnight shift.

B. Single-officer shifts are not appropriate on any occasion as far as I am concerned. Too much can happen that one officer cannot handle. In a quiet place like San Francisco, I had to call SFPD twice in that months time as a back-up in the Psychiatric Ward.

2. Presently I am a GS-9. I am the lowest service chief at my facility. October 7, 1989, I hope to be advanced to GS-11. My Director has already approved, but I have to resubmit a Position Description changing me from a GS-083 to a GS-080.

3. I do not think that there is much consistency across the country in the grading of VA Chiefs. Some smaller facilities have higher graded Chiefs than much larger ones.

4. I don't think the VA Police Officers salaries are commensurate with the salaries paid local officers anywhere in the United States. The VA Police were far below the local officers in Dallas, TX despite special pay, much farther below locals in San Francisco, where special pay was also paid and just below locals in Kansas City where no special pay is received.

5. Special Pay has been requested in the past by this medical center, but turned down because of low turnover.

6. This medical center was the fourth or fifth center in the system to get GS-6 classifications for it's officers. I have sent out paperwork to at least 10 other centers to help them attain this status. Most of the 10 have done so.

7. A. The only contact that I have with VACO is issuance of CIP cards to new officers and clearance of new officers. I have a good relationship with VACO, but I do not think that they are sufficiently staffed to offer much guidance and assistance to the field.

B. This is one of the chief complaints in the past. There is no communication from VACO to the field about incidents at other VAMC's. It was days before anyone found out about the shooting in Cleveland and the Bronx. We all found out by the grapevine at once, but officially it was some five or six days on both events.

(2)

C. As I said in paragraph A, VACO is not sufficiently staffed to inform the field of anything along the lines of police practices. Bill Harper is capable, but he can't do it alone.

8. We receive periodically, training outlines from VACO. The last one was October 6, 1988, "Inservice Training Program Outlines for VA Police Officers." I use this for training all of my officers, especially the new hires. Other training is received in the Administrative letters that we receive in the field.

9. I have never received Security Chief training. The only training that I have received has been on the local level and of my own volition. I have taken a correspondence course from the United States Office of Personnel Management on Applied Supervision an quite a few FBI, Federal Protective Service, etc. classes. I would welcome more training.

10. I would welcome training in all aspects of my job as a Security Chief. I know of other chiefs that know nothing of personnel management or supervision and no nothing about dealing with the Union.

11. VA Police Officers are currently only required to undergo a physical exam once a year.

12. Periodic physical fitness training should definitely be mandatory. Currently I have four (4) of my twelve (12) officers enrolled in a physical fitness course here in Kansas City. The rest don't want to be bothered. Testing should be mandatory.

13. A. Protective vests/nightsticks are all done on a local level. There is no set pattern. It is strictly up to the local Chief and his management team. Vests should be mandatory nationwide. Officers can be made to wear them.

B. For VAMC's in any type crime area, the MACE weapon does not provide sufficient stopping power against individuals committing criminal acts. Sometimes it just makes them madder if you shoot them with a stream of MACE. MACE has no effect on individuals high on certain forms of narcotics.

C. I have never seen MACE used since May, 1985. I have never heard of it used in Dallas or San Francisco and only twice here in Kansas City. I don't know if it does any good as an intervention strategy because most patients know that you are not armed with a weapon or a nightstick so they have nothing to worry about.

D. Out of 12 local hospitals in Kansas City, MO, only one other is not armed and that is Children's Hospital. In Dallas, I believe all of the local hospitals were armed. I am not sure about San Francisco.

E. (1) During my stint in Dallas, TX we were involved in numerous wrestling matches, take-downs, brawls, but no serious injuries occurred. Glasses were broken, eyes were blackened, one officer in taking a knife away from a female patient had it prick him in the mouth doing no serious damage. We were involved in numerous gun/knife incidents, but suffered no serious damage. One incident is recorded in my Senate testimony.

(2) During my 1 1/2 years in San Francisco we had one officer named John Mullolley suffer a broken ankle while trying to escape from being hit by a subject that was breaking into vehicles. He is no longer with the VA due to this injury. Again we had the same amount of wrestling matches, take-downs, fight, etc. with no serious injury.

(3) In Kansas City, we have had an officer suffer a broken bone in his hand during a scuffle with a patient. Two other officers and myself were also involved in this scuffle. Two officers suffered black eyes and bruises in subduing a patient in the operations office. One officer has had his glasses broken twice in scuffles with a patient, another officer received a busted lip and patches of hair pulled out in subduing a patient on the Psychiatric Ward. These all can be documented if necessary.

(4) Only in Dallas, TX were the officers wearing body armor when these incidents occurred. All were wearing CIP weapons and none were wearing nightsticks. A nightstick could have been used to subdue most of the patients involved in these incidents without serious damage being done. The patients in most of the incidents that I have seen or been involved in know that the VA Police are unarmed and are fair game.

F. Some of the incidents described above could have been avoided if the officers had been armed with a weapon and a nightstick. Most individuals are a little reluctant to jump on an officer who is better armed.

G. If a nightstick is authorized, I think it should be worn both inside and outside the medical center. If you get a stat call inside the hospital I can't see anyone stopping and leaving their nightstick in the patrol car or operations office before going to the floor.

H. Since the Brecksville and Bronx shootings, no changes have been made to improve protection of VA Police Officers. Body armor still is not mandatory and is used on local basis. Officers are still not armed with a firearm for self protection. After reading all information available and talking to people that were there, I believe one of the officers in Brecksville, Ohio could have been saved if he was armed.

I personally knew the officer in the Bronx, NY that was shot and I believe he might have survived if he could have defended himself. This is all speculation of course, but shootings like this will happen again and I hope that we don't wait too long to arm all of the VA Police Officers and give all of them body armor and make it mandatory that they wear the armor.

FRANK M. WATTS
Chief, Security Service

MORTGAGE BANKERS ASSOCIATION
OF AMERICA

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July 21, 1989

The Honorable Alan Cranston
Chairman
Committee on Veterans Affairs
United States Senate
Washington, DC 20515

Dear Mr. Chairman:

MBA is pleased to submit the answers to your follow-up questions for Angelo Mozilo who testified at the June 22 hearing on S 1158.

Question 1:	How much is the average tender of partial payment, expressed as a percentage of the debt a veteran owes at the time?
Answer:	It is impossible to ascertain the average partial payment submitted by a veteran or the percentage of the debt outstanding when the veteran tenders a partial payment. Unless a formal forbearance agreement is executed between a veteran and lender, a lender will usually return the payment with an explanation to the veteran. Section 36.4315 of VA regulations provides lenders with the authority to return partial payments under certain circumstances. Virtually all VA-guaranteed loans are pooled in mortgage-backed securities backed by the Government National Mortgage Association (GNMA). Principal and interest (P&I) payments due on the pools of mortgages in GNMA securities must be passed through to investors each month whether or not the payments have been made by the borrowers. When a loan is delinquent for 90 consecutive days, a lender may repurchase the loan from the GNMA pool. This allows a lender to cut its losses by not having to pass through P&I payments it has not received. A lender who accepts partial payments from a veteran prolongs the period of time that it may repurchase the loan from the GNMA pool.

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1125 Fifteenth Street, N.W. Washington, D.C. 20005

Question 2: On Page 9 of your testimony, you state that the provisions in S 1158 to reduce fees for 5- to 10-percent downpayments might create a "two-tiered pricing policy" in the secondary market that would increase closing costs for veterans who make no downpayment. Can you explain exactly what you believe this two-tiered policy would entail and how and why you believe it would come about?

Answer: The price of a GNMA mortgage-backed security is dependent on the expected life and quality of the underlying Federal Housing Administration and VA mortgages. With the introduction of a downpayment provision in the VA program, it follows that VA loans with a downpayment would have a lower foreclosure rate and, therefore, be of higher quality and have a longer expected life.

If this trend did, in fact, materialize, the marketplace could begin considering the amount of downpayment in the pricing of VA loans. Credit markets could begin paying a premium for VA loans with downpayments which translates into lower interest rate and/or discount points in VA transactions. On the other hand, instead of paying a premium, the market could assess a "surcharge" for VA loans with no downpayment, thereby increasing the cost of homeownership to the veterans who could least afford it.

Question 4: An article in the April 18, 1989, issue of MBA's publication, Real Estate Finance Today, discussed the practices of lenders granting "partial waivers of liability" to a borrower in order to reduce the total outstanding indebtedness to a level that ensures VA will bid on the property.

A. Please describe the effect of these so-called "buy-downs" on Va no-bid determinations and the VA loan program in general.

B. Another article in the same issue states that the rate of no-bids leveled off to 21.6 percent during the last quarter. Is this leveling off at all attributable to buy-downs, and, if so, would not this practice tend to reduce the impact of an increase in no-bids due to other factors?

Answer: In order to avoid a no-bid it is permissible for a lender to pay down the principal balance or absorb the accrued interest to the extent necessary to ensure that the unguaranteed portion of the debt is less than the net value of the property to the VA. The decision whether or not to employ this techniques to avoid no-bids will depend on an individual company's business strategies and its capabilities and efficiencies in disposing of property.

Answer: Between September 1988 and December 1988, the buy-down technique was employed a total of 214 times, mainly in the oil patch states. During the first quarter 1989, VA no-bids (2,129) represented 21.7 percent of the total number of VA liquidations. The number of foreclosures that resulted in conveyances as a consequence of the "buy-down" technique represents only .22 percent of the total numbers of VA liquidations for the first quarter 1989.

Question 5: Please explain Countrywide Funding Corporation's policies and experience in making VA-guaranteed home loans.

Answer: Countrywide has been involved in the VA program since 1969. Participation has not been restricted by geographic areas nor by value of the home. During the period, May 1988 through May 1989, VA no-bid losses incurred by Countrywide Funding Corporation totalled $690,481.82.

Because of our deep concern over the financial exposure created by the VA no-bid policy, Countrywide Funding Corporation uses the strictest underwriting criteria in the range acceptable to the VA, and requires a higher quality of credit than required in other programs. Therefore, many veterans who would qualify for a loan under other programs will not qualify for a VA loan.

Countrywide does not price VA loans differently as there is no pricing increase that could offset the financial risk created by the no-bid policy. If the VA goes forward with its cost of funds regulation, Countrywide will become geographically restrictive and further tighten credit guidelines. The potential financial loss exceeds any financial gain in making VA loans.

Question 6: On page 4 of your testimony, you state that factoring the government's cost of funds into the no-bid formula would "definitely increase the number of no-bids," but that it is not clear whether the adjustment in S 1158, which takes into account the imputed interest costs of paying the guaranty, would decrease the no-bids by a proportionate amount. Please explain why you doubt that a proportionate decrease in no-bids would occur.

Answer: The statement that a proportionate decrease in no-bids might not occur under the formula in S 1158 was based on our own experience with the variability of interest rates.

There are already many factors in the no-bid formula, the cost of which are difficult to predict when a loan is originated. Predicting a portion of the government's interest rate at the time when a mortgage might be in default and through foreclosure is exceedingly difficult. This variability will make it more difficult for lenders to predict the risks associated with a VA loan.

While the VA may be able to predict the effect on their portfolio with some degree of certainty, it is far more difficult for an individual small volume lender to calculate that potential when examining a given loan. Consequently, the inclusion of the government's cost of funds in the no-bid calculation may have a larger deterrent effect on the lender than the VA anticipates.

Question 7: On page 2 of your testimony, your state that a VA no-bid costs lenders, on average, $15,000 to $20,000. On page 5, you state that the average cost is $20,000. What are your best data in this regard?

Answer: Between 1984 and 1986 lenders saw the incidence of no-bids rise dramatically from 6.40 percent in 1984 to 15.11 percent in 1986. Although no official study has been conducted, an informal survey of MBA members indicates that lender losses after disposition of VA no-bid properties averaged $20,000 per property. This means that the industry has suffered losses in excess of $112 million for 1984 through the first quarter 1986. Since that time losses have accelerated.

We would be pleased to furnish any additional needed information.

Sincerely,

Burton C. Wood

Burton C. Wood

National Association of Home Builders
15th and M Streets, N.W., Washington, D.C. 20005
Telex 89-2600 (202) 822-0200

July 28, 1989

The Honorable Alan Cranston
Chairman, Senate Veterans Affairs Committee
414 Russell Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

I have attached the National Association of Home Builders' response to the questions you submitted subsequent to the June 22, 1989 hearing on S. 1158, The Veterans Home Loan Guaranty Restructuring and Solvency Act of 1989.

It was a pleasure testifying before the Senate VA Committee and I hope that our response to your questions will be of assistance.

Sincerely yours,

Jim Irvine, Chairman
Federal Government Affairs
Committee

Attachment

NAHB RESPONSE TO QUESTIONS OF SENATOR CRANSTON IN FOLLOWUP TO THE JUNE 22, 1989 HEARING ON S. 1158, THE VETERANS' HOME LOAN GUARANTY RESTRUCTURING & SOLVENCY ACT OF 1989

Question 1

On page 6 of your testimony, you cite the Peat Marwick conclusion, stating that the fund that would have been established by H.R. 5221 (100th Congress) would begin showing a continuing deficit beginning in 1993. However, Congressional Budget Office projections indicate that there would be no deficit in the fund that would be established under S. 1158 until at least the year 2000. Please state specifically any reason you might have for disagreeing with the CBO projection.

Answer

Studies are based on various assumptions made by the entity doing the research. The Peat Marwick study assumed a higher default rate on VA loans in part because a veteran would be given indemnity from VA liability if the loan went into default. While we did not have access to the Congressional Budget Office (CBO) analysis of S. 1158 at the time of the hearing, we had commented in the past on a CBO analysis done on H.R. 5221 (H.R. 1415) which is similar to S. 1158.

In our testimony on April 18, 1989 before the House Veterans Affairs Committee, we stated that in our opinion, the assumptions made by CBO in its forecasts appear overly optimistic. For example CBO estimates that default rates under the House legislation will be more favorable than recent experience requiring fewer outlays. Yet, because the veteran is released from liability on foreclosure much higher default rates could occur.

Question 2

On page 7 of your testimony, you state that the provisions in S. 1158 to reduce fees for 5- and 10- percent downpayments "would also cause new homebuying veterans, who would be less likely to have a downpayment, to pay more." Please explain how the reduced-fee provision could cause new homebuying veterans "to pay more."

Answer

Under S. 1158 if a veteran makes a downpayment of 5 percent or more he would only have to pay a 3/4 percent fee rather than 1 1/4 percent. If the veteran makes a 10 percent downpayment the fee is further reduced to 1/4 percent. The fact that some veterans will be paying less may require others to pay more in order to compensate for loss of revenue. Veterans who may not have had the opportunity to save for a downpayment could be impacted. Currently over 25 percent of veterans make a downpayment.

Additionally, if there are prospective losses in the program the Secretary is allowed to increase the fee up to 20 percent. Would this also include fee increases for those making downpayments? If not, other veterans would bear any brunt of the increase. We urge that increases in fee revenue be generated from additional contributions from the government and not the veteran.

Question 3

On page 9 of your testimony, you state that many States prohibit deficiency judgement against individuals who have lost their homes through foreclosure. Please provide more-detailed information about these state laws, including whether, in your view, these State laws preempt liability to the federal government for a debt created under a federal law -- the veteran's liability to VA for guaranty payments.

Answer

The VA pursues a deficiency on a defaulted loan under a contractual agreement with the veteran. However, two states that we are aware of (California & Oregon) prohibit any deficiency judgements and the VA has been challenged in court in its attempt to collect these deficiencies. It is our understanding that the VA lost their case during litigation in Oregon and also on appeal. In California however, the VA won the case and the veteran is appealing. Since it is the same appeals court that will be deciding the California case as the Oregon case the outcome is uncertain. Our concern in any event is that a veteran may in some states be paying for indemnity which he may not actually receive.

QUESTIONS SUBMITTED BY SENATOR CRANSTON TO THE PARALYZED VETERANS OF AMERICA IN FOLLOW-UP TO THE JUNE 22, 1989 HEARING

1. If the number of no-bids increases under legislation like S. 1158 or H.R. 1415, and lenders respond, as later testimony today will suggest they might, by adopting more stringent loan-underwriting standards for V.A.-guaranteed loans, would you consider this an improvement in the program because it would reduce defaults and foreclosures, or a threat because it would make it more difficult for some veterans to obtain a V.A.-guaranteed loan?

2. Can each of you tell us whether you have members who have experienced difficulty in being able to use their home-loan guaranty entitlements because of very high real estate prices in certain parts of the country -- and if so, please tell us which areas are experiencing problems.

3. I have two questions related to the Agent Orange issue as to which I would like to ask the cooperation of each organization in providing a response in writing, by July 6 if possible.

First, as I noted earlier, there is a range of views on S. 1153 and more specifically on those provisions which would provide an interim presumption for non-Hodgkins lyphoma and soft tissue sarcoma. Would you identify and provide your views on those key scientific studies which you believe best support your current position on whether there should be a temporary or permanent presumption as to these two diseases.

Second, please indicate how, if at all, your organization plans to participate in VA's rule-making efforts to comply with the California federal court decision invalidating VA's Agent Orange regulations.

PVA

PARALYZED VETERANS OF AMERICA
Chartered by the Congress of the United States

June 27, 1989

The Honorable Alan Cranston
Chairman
Senate Committee on Veterans' Affairs
SR-414 Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to respond to your follow-up questions which you provided us at the close of the June 22 hearing on legislation relating to the DVA Loan Guaranty Program and Agent Orange. I have numbered our answers to correspond with the questions in your request.

Prior to our response to your question concerning the relative merits of potential changes in loan-underwriting standards imposed by lenders, we wish to convey our understanding of the different effects which S. 1158, H.R. 1415, and the DVA's planned approach to "no-bids" would have on the number of instances when the Department does not purchase a foreclosed property from the lender. I also wish to insure that PVA's position on the "no-bid" formula is clear.

As you know, the number of DVA "no-bids" will increase significantly if the Department is permitted to include the cost of borrowing when determining whether or not to acquire a foreclosed property. As we stated in our testimony on June 22, we strongly oppose the Department's planned implementation of this practice. The Mortgage Bankers Association has estimated that "almost 70 percent of DVA home loan program lenders would limit their participation in the VA home loan program if there is an increase in the number of no-bids." Such a response by lenders would seriously threaten the program.

S. 1158 would, likewise, cause the number of "no-bids" to increase, although by a lesser degree, by requiring that only a portion of the cost of borrowing be considered. We remain concerned that by including part of the cost of borrowing in the "no-bid" formula, fewer properties will be acquired by the DVA and other forms of loans, such as FHA and conventional, will then represent more attractive investments for lending institutions.

It has always been our understanding that H.R. 1415, if enacted, would not result in an increased number of "no-bids." We do not believe, therefore, that lenders would be forced to adopt more

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stringent underwriting standards for DVA guaranteed loans if the no-bid formula, as expressed in H.R. 1415, were implemented.

1. In response to your first question, if the number of "no-bids" increases and lenders adopt more stringent underwriting standards in an effort to reduce losses and risks, some veterans will certainly find it more difficult to obtain a DVA guaranteed loan. Although overly liberal underwriting standards do a disservice to both the veteran and the program, we are concerned that the basic premise of this important benefit program will be threatened if lenders begin to shore up that industry in an effort to protect themselves when the DVA acquires fewer properties and pays less for losses from defaulted homes.

   There is no question that more stringent underwriting standards imposed by lenders would result in fewer defaults and foreclosures. We believe it is the Government's responsibility and obligation, however, to ensure that the concept of a DVA home loan "benefit program" remains intact for the next 13 million veterans who use the program. We believe, therefore, that every effort should be made to minimize potential increases in the number of "no-bids."

2. PVA members generally experience the same difficulties as other veterans who attempt to use their DVA home loan eligibility in areas where housing costs are unusually high. Here in the Washington, D.C. area, for example, several of our members have had to use conventional financing because the DVA guaranty was insufficient to obtain a loan. As we noted in our testimony on June 22, our members are further restricted by the limited number of accessible/adaptable houses in a given area.

   We agree with you that this problem should be addressed by offering an additional amount of guaranteed entitlement for those individuals who are unable to use the DVA home loan program in high cost areas. We believe such areas like Los Angeles, San Francisco, and Washington, D.C. should be identified and designated as areas where such additional entitlement is in order.

3. Regarding S. 1153, as we stated in our testimony before your Committee on June 22, PVA does not support legislation which provides interim or permanent presumption for non-Hodgkins lymphoma (NHL) or soft-tissue sarcoma. Since the late 1970's, extraordinary scientific investigatory studies involving epidemiological evidence have been directed at finding a concrete link between Agent Orange and certain diseases. Based on the scientific evidence we have reviewed to date, we do not believe that such a connection can currently be found.

   The two most recent studies upon which we base our position are the DVA's "Proportionate Mortality Study of Army and Marine Corps Veterans of the Vietnam War" (1987) and the Centers for Disease Control's "Vietnam Experience Study" (1988). In neither of these exhaustive studies could we find convincing evidence that would warrant the establishment of interim or permanent service-connection for NHL or soft-tissue sarcoma.

4. PVA does not plan to directly participate in the DVA's rule-making efforts to comply with the recent California federal court decision which invalidated existing Agent Orange regulations. We do plan to closely monitor the progress of this issue and we may choose to comment on the new rules once published in the Federal Register. We also plan to review those Agent Orange cases over which we have power-of-attorney.

Thank you for soliciting our views on these matters. If I can be of further assistance, please do not hesitate to call.

Sincerely,

Douglas K. Vollmer

Douglas K. Vollmer
National Legislative Director

QUESTIONS SUBMITTED BY SENATOR CRANSTON TO THE PARALYZED VETERANS OF AMERICA IN FOLLOW-UP TO THE JUNE 22, 1989 HEARING

1. On page 4 of your testimony, you argue that the ratio vetween the veteran's fee and the government contribution "should be adjusted in favor of the veteran assuming that the indemnity fund becomes solvent in several years." Could you please explain more specifically how and under what circumstances you believe the fee and the government contribution should be adjusted?

2. On page 5 of your testimony, you state that a 90-percent-of-par lower limit on nonrecourse loan asset sales "gives the Secretary a reasonable degree of flexibility when transacting the sale of vendee loans . . . ." On page 9, you state that this 90-percent limit effectively would prohibit nonrecourse sales and you recommend the limit be changed to 85 percent -- similar to the return realized in the latest nonrecourse sale conducted by VA.

A. Do you believe that, under a 90-percent limitation, VA would be able to conduct any nonrecourse sales?

B. Have you looked at the circumstances of the March 23, 1989, sale to see whether the loans sold were in any way typical of VA's loan portfolio?

C. If you determined that the sale represented a group of unusually attractive, low-risk loans, would that alter your suggestion that an 85-percent limit might be a viable one?

3. Most veterans choose to finance the loan fee along with the purchase price. Thus, a VA-guaranteed loan, which under S. 1158 would carry a higher fee in return for general indemnification for the veteran-borrower, would also include as part of its remaining balance at the time of an assumption a pro-rata portion of the higher fee. In effect, then, the assumptor would be paying off the remaining portion of the higher initial fee -- plus the additional, higher assumption fee under S. 1158. Under these circumstances, would it not be fair to regard the assumptor as having paid for indemnity and, therefore, as being entitled to it?

PVA

PARALYZED VETERANS
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Chartered by the Congress
of the United States

July 17, 1989

The Honorable Alan Cranston
Chairman
Senate Committee on Veterans' Affairs
SR-414 Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your letter of July 12, 1989, in follow-up to the Committee's June 22 hearing on home loan guaranty and agent orange legislation. I have numbered my answers to correspond to the three questions which you have proposed in your letter.

1. As you know, PVA has strongly endorsed home loan legislation which includes "indemnity" features as expressed in S. 1158 and H.R. 1415. We are convinced that such legislation is necessary in order to reverse the present trend of billion dollar appropriations needed to keep the current program afloat.

   We have historically supported the indemnity fee contained in these bills. Although we fully support and are grateful for the provisions which waive the 1.25 percent fee for veterans with service-connected disabilities, our commitment to the total success of the program can be demonstrated by the fact that we have been willing to forego such a benefit if it meant the difference between the success or failure of the new indemnity program. As we stated on page seven of our testimony, "It is critical that the program gets off to a good start. By building up the guaranty fund resources, the program will be better prepared to accommodate any unforeseen increases in the number of defaults."

   Having said that, and in response to your first question, PVA understands that it will take several years for a new indemnity program to become solvent. We are suggesting on page four and page sixteen of our testimony that, as the program matures, the necessity of the veteran's fee should be closely monitored in order to determine if the fee can be decreased or eliminated altogether for all veterans. Based on the determination that a total of two percent of each

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guaranteed loan amount would initially be needed to make the proposed mortgage indemnity fund operate on a sound fiscal basis, we are suggesting that once the program is solvent, the veteran's fee should be decreased or eliminated if it is determined that a total of less than two percent is needed to operate the program.

We could not, at this time, support further increases in the veteran's share of the fees required to operate the proposed indemnity fund on a sound fiscal basis. We believe such increases would jeopardize the concept of a "benefit program". We believe the Government's contribution should reflect any increases that are determined to be necessary in the future. We wish to emphasize, as we stated on page eight of our testimony, that we firmly believe loan and assumption fees should only be raised and lowered by legislation.

2. We believe the 90 percent-of-par lower limit on non-recourse loan asset sales will make it difficult for the Secretary to transact such a sale. Although this would prevent the sale price from being substantially discounted, we agree with you that the Secretary's degree of flexibility would be significantly restricted with such a limitation. Our suggestion to lower the limitation to 85 percent was made primarily to offer an alternative to H.R. 1415 and S. 1158. We realize that the Department's sale of loans in March was not typical of the loan portfolio.

3. For the same reason that we would oppose indemnification of a non-veteran's original loan, we would oppose indemnification of a non-veteran's assumption of a DVA loan. We simply do not believe the Government should be obligated to provide indemnification protection for non-veterans, thus absorbing the cost of a non-veteran's default. As we stated in our written testimony, unless it proves to be a significant source of funding essential to the solvency of the program, we prefer that non-veterans be excluded from this proposed extension of the indemnification provision.

Thank you for soliciting our views on these matters. Please do not hesitate to contact me if you have any further questions regarding our thoughts on these issues. PVA appreciates your commitment to the long term success of DVA's housing programs.

Sincerely,

John C. Bollinger
Associate Legislative Director

The American Legion

For God and Country

★ WASHINGTON OFFICE ★ 1608 "K" STREET, N.W. ★ WASHINGTON, D.C. 20006 ★
(202) 861-2700 ★

June 23, 1989

The Honorable Alan Cranston
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510-6375

Dear Senator Cranston:

This is in response to your request to respond to questions in follow-up to the Committee's June 22, Agent Orange legislation hearing.

Responses to the follow-up questions are enclosed.

We wish to thank you and the members of your staff for working so diligently in the introduction of this important legislation.

Sincerely,

Dick

RICHARD S. CHRISTIAN
Deputy Director
National Veterans Affairs and
Rehabilitation Commission

Enclosure

Questions from Senator Alan Cranston to Veterans Service Organizations in connection with June 22, 1989, Hearing.

Q. First, as I noted earlier, there is a range of views on S. 1153 and more specifically on those provisions which would provide an interim presumption for non-Hodgkins lymphoma and soft tissue sarcomas. Would you each, for the record, identify and provide your views on those key scientific studies which you believe best support your current position on whether there should be a presumption as to these diseases.

A. There are several key scientific studies to support the presumption for compensation for non-Hodgkins lymphoma and soft tissue sarcomas. One of the most recent studies published in the American Journal of Epidemiology, June 1989 issue, associates dioxin exposure with many cancers. This is a study of the mortality of the people who lived in Seveso, Italy, the location of an industrial accident in 1976.

The National Cancer Institute Study of the effects of herbicide on farmers.

In the Environmental Protection Agency's Review of Dioxin, Webb, K., et al: "Pilot Study on Health Effects of Environmental Dioxin in Missouri."

A study by Ayres, S.M., et al, in "Environmental Health Perspectives, 1985." Animal experiments have shown development of tumors.

Dr. Barry Commoner reports about a toxicology time bomb in an article published in Hospital Practice, June 1978.

Erikson, M. "Case Control Study of Malignant Mesenchymal Tissues of the Soft Tissue and Exposure to Chemical Substances", reports that exposure to phenoxy acids may comprise a risk factor in the development of malignant mesenchymal tumors of the soft parts.

Hardell, L. and Sandstrom, A., "Case Control Study - Soft tissue Sarcomas and exposure to, Phenoxyacetic Acids or Chlorophenols." This report shows that exposure gave an approximately 6-fold increase in risk of this type of tumor.

Hardell, L., "Malignant Lymphomas and Exposure to Chemical Substances, Especially Chlorophenols and Phenoxy Acids." The report shows that exposure to dioxin appears to constitute a risk factor for the incidence of malignant lymphoma.

Q. Second, please indicate how, if at all, your organization plans to participate in VA's rule-making efforts to comply with the California Federal Court decision invalidating VA's Agent Orange regulations.

A. The American Legion will actively participate along with the VA in the revision of rules in order to properly and fairly adjudicate claims based on exposure to herbicides containing dioxin during a veteran's service in Vietnam. A recommended list of diseases which are known to have been caused by dioxin exposure will be provided to the VA.

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JUL 03 1989

June 23, 1989

Senator Alan Cranston, Chairman
Senate Veterans Affairs Committee
SR-414 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Cranston:

This letter will respond to the follow-up questions personally handed to us by your committee staff following the Committee's June 22, 1989 hearing on Agent Orange and DVA home loan guaranty legislation. The first of your questions asks what scientific studies can be identified to justify a presumption of service connection for non-Hodgkins lymphoma or soft tissue sarcoma.

While the VVA might be prepared to identify the specific scientific studies upon which a justification could be given, under the circumstances it would be inappropriate to do so while the debate over whether the presumption should be permanent or interim continues. Were we, or for that matter any of the other veterans service organizations, to comply now with such a request would be tantament to taking the bait in what could easily be seen as an all too familiar trap. As we stated at the hearing, the issue is not one of scientific certainty on the relationships between exposure and disease but is instead one of granting the benefit of reasonable doubt to the dioxin exposed and diseased veteran.

In the past the DVA has always asserted that the science, no matter how much or how relevant it is to an association between exposure and disease, is inadequate to justify compensation. For this organization now to offer a list of studies for the Committee's consideration would signal a willingness on our part to again be drawn into the gambit of an unresolvable scientific debate on the certainty of a relationship between exposure and disease. Engaging once again in that debate would be inappropriate and might further delay the granting of benefits to Agent Orange exposed veterans on the same terms as those governing the granting of compensation for every other category of veterans seeking service connection on a presumptive basis.

In answer to your second question on what, if any, action the VVA has planned for participating in the DVA's rule-making efforts to comply with the recent decision in our lawsuit, we draw the Committee's attention to the enclosed June 22, 1989 letter to Secretary Derwinski. The contents of this letter are self explanatory.

★ A not-for-profit national veterans service organization ★

As always, Mr Chairman, we appreciate your ongoing interest in the VVA's views. Should you need additional clarification of our responses to your follow-up questions, please advise us at your earliest convenience.

Sincerely,
Paul S Egan
Paul S. Egan
Legislative Director